

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. JUAN SUMULONG, DEFENDANT AND APPELLEE.

G.R. No. 9972. March 25, 1915

Ponente: CARSON, J.

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CARSON, J.:

This case comes before the court upon an appeal by the Government from an order of the Court of First Instance of Laguna sustaining a demurrer to the information filed herein.

The defendant was charged with the violation of a municipal ordinance of the municipality of Los Baños, Laguna, regulating the payment of license fees for fishing privileges. The information filed by the fiscal was as follows:

"About the 24th day of October, 1913, in the municipality of Los Baños, Laguna Province, the defendant did willfully, illegally and criminally violate an ordinance of the municipality by engaging in fishing in public waters without being provided with a license from the municipality, in violation of an ordinance of said municipality, made and enacted on the subject."

Article 1 of the ordinance in question classifies and graduates the license fees for fishing privileges as follows:

For each fishery in public waters comprised within the jurisdiction of the municipality of Los Banos, to wit:

For each drag-net, quarterly in advance, P20. For each pante, quitang, and panilay, quarterly in advance, P0.50.

For each fish corral, quarterly in advance, P2.

A demurrer was interposed to the information on the ground that the facts alleged did not constitute a public offense; first, because the municipal council was without power to impose the license taxes in question, and second, on the ground that the ordinance was unconstitutional. The lower court in passing upon the demurrer held that the ordinance in question was invalid for the reason that the municipality was without the power to classify the license fees in the manner set out in article 1 of the ordinance.

In discussing the question at issue the court said: "The law permits the municipality to collect a tax for granting a license to fish, but it says nothing about a tax on fishing apparatus, nor on the different kinds of such apparatus. So, in the opinion of the court, the ordinance in question is illegal, for in enacting article 1 thereof the powers granted by law to municipalities were exceeded." It is clear that the lower court was of the opinion that the ordinance in question imposed a tax upon the different kinds of fishing apparatus and paraphernalia referred to in article 1 of the ordinance; but we think a mere reading of the ordinance, bearing in mind its purpose, shows that such was not the case. Clearly the municipal council had no such intention. The whole purpose of the ordinance was to classify and graduate the license fees for fishing privileges according to the kind of apparatus used. No tax is imposed upon the several kinds of apparatus; they are referred to in the ordinance merely as a means of classification.

The authority of the municipality to impose a license for fishing privileges is found in subsection 3 of section 43

of the Municipal Code. A general power is conferred and nothing is said regarding the classification or graduation of such fees. The question then is, whether the municipality under this general grant of power may classify and graduate the license fees for fishing privileges, or whether it is limited to the imposition of a single license tax, operating on all persons alike, regardless of the apparatus used or the benefits derived from such a privilege.

Similar questions have frequently been before the American courts for determination, and the weight of authority clearly indicates that, under a general power to impose and collect license fees and occupation taxes, a municipality has the right to classify and graduate such fees according to the value of the privilege conferred, so long as such classification is reasonable and does not contravene constitutional rights.

The objection generally interposed to such ordinances is that they violate the constitutional provisions requiring uniformity of taxation.

It has however been held that merchants may be classified according to the amount of their sales or the value of their stocks, and a graduated license fee imposed accordingly. Such a tax is held not to be a tax upon property, but a license tax imposed for the privilege of carrying on the business in question. (*Clark vs. Titusville*, 184 U. S., 329; 46 L. ed., 569.)

In *ex parte Sisto Li Protti* (68 Cal., 636), it was held that a city council may provide that the license fee to be paid by laundrymen shall be in proportion to the number of persons employed by them; and a similar ordinance relating to laundrymen was held valid in *State vs. French* (17 Montana, 54; 30 L. R. A., 415).

Many of the adjudicated cases have laid down the rule that license fees are not subject to criticism for lack of uniformity so long as the taxes imposed are the same upon all members of a particular class.

A requirement of a license fee from peddlers, classifying them as foot peddlers, peddlers with one-horse cart or wagon, and peddlers with two-horse cart or wagon, charging a different rate for each, was upheld in *Kneeland vs. Pittsburgh* ([Pa.] 10 Cent. Rep., 421).

Likewise an ordinance charging a license fee upon vehicles, graded in amount from \$3 to \$25, with reference to the character of the vehicle and the use to which it is to be put, and the number of horses used therewith, was held not to be void for want of uniformity, as it operated uniformly upon all the subjects of a particular class. (*Smith vs. Louisville* [Ky.], 68 S. W., 911.)

In Illinois it has been held that a municipality, under a charter authorizing it to license keepers of livery stables, has full power to prescribe a rule that such license shall be paid in proportion to the number of carriages kept for hire. (*Howland vs. Chicago*, 108 Ill., 496.)

A license tax imposed upon hotels has been held not to be unreasonable or oppressive because the amount required to be paid is graduated by the number of rooms which may be devoted to the accommodation of the public. (*St. Louis vs. Bircher*, 7 Mo. App., 169.)

In the case of *Singer Mfg. Co. vs. Wright* (33 Fed., 121), the court, in discussing a similar question, speaking through Justice Newman, said: "It will never be held anywhere, I imagine, that the state may not classify business for taxation."

State legislatures are usually limited in the exercise of their legislative powers touching taxation by constitutional provisions; and the municipal authorities are in like manner limited by the constitution, by general statutory provisions, and the terms of their municipal charters. A further limitation is not infrequently found in the general principle requiring municipal ordinances to be reasonable and in furtherance of the purposes of the power conferred.

In *Singer Mfg. Co. vs. Wright* (supra) the court said further: "The power to tax business is controlled only by the clause 'all taxation shall be uniform upon the same class of subjects.' This is a restriction upon the power to tax, but the restriction is as to uniformity, and this uniformity as to 'the same class of subjects. The power to classify and arrange into classes of subjects is not limited or restricted. This is left to the legislature. A mere arbitrary arrangement of the same business precisely into separate classes, and discriminating taxes as to the classes, might not be upheld. But where there is reasonable difference and distinction, the legislature is unrestricted in the matter of classification."

The Philippine Bill, section 5, provides: "That the rule of taxation in said Islands shall be uniform."

The authorities are conclusive upon the point that an arrangement of a business into classes, providing a graduated scale of license fees for each class, does not violate the constitutional provisions relating to uniformity of taxation.

In the case of *Davis & Co. vs. Macon* (64 Ga., 128), the court held: "A city may tax a butcher or retailer of meats, upon the wagon or wagons used in his business, and this likewise is a part of the business tax. The validity of this specific tax is not impaired by exempting the wagons used in delivering milk from dairies on country farms, since the city may tax one class of business and exempt another, or may tax different occupations and their instrumentalities unequally."

In the case of *Stull vs. DeMattos* (23 Wash., 71), wherein the court had under consideration an ordinance classifying auctioners and providing a separate license fee for each class, the following language was used: " * * * we know of no reason why the city council may not classify singlekinds of business in accordance with the different character and kind of property sold, and graduate the license tax in any manner that the exercise of a sound discretion dictates."

Under the provision of section 43 (c) of the Municipal Code a municipality is authorized to impose a license for fishing privileges. No restriction whatever is placed on this power. It is therefore clearly within the legal powers of a municipality to make any reasonable classification of the persons engaged in fishing and to graduate the license fees accordingly.

The appellee contends that, under the grant of power conferred by section 43 of the Municipal Code, the municipality has only the right to impose a general license tax without regard to the apparatus used or the benefits which are expected to result from the privilege. This contention can not be sustained. In considering similar questions the courts have frequently said that it is nothing to one person, belonging to a certain class, that some one else, belonging to another class, pays more or less than he does, since all belonging to his class must pay the same. So far as the record indicates the classification made by the municipality of Los Baños was a reasonable one, and the license fees were graduated according to the value of the privilege conferred.

We find nothing objectionable in the ordinance, and the order entered in the court below sustaining the demurrer *Manila Electric, etc., Co. vs. Bd. of Public Utility Conors.* should therefore be set aside; without costs in this instance. So ordered.

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

MORELAND, J., dissenting:

I do not believe that the information contains facts sufficient to show the commission of a crime under sections 6 and 7 of the Code of Criminal Procedure; and I am accordingly of the opinion that the demurrer, being based on that ground as well as others, was properly sustained.

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