

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JACOB ROSENTHAL AND NICASIO OSMEÑA, DEFENDANTS AND APPELLANTS.

G.R. Nos. 46076, 46077. June 12, 1939

Ponente: LAUREL, J.

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LAUREL, J.:

Appellants, Jacob Rosenthal and Nicasio Osmeña, were charged in the Court of First Instance of Manila with having violated Act No. 2581, commonly known as the Blue Sky Law, under the following informations:

"Case No. 52365

"That in or about and during the period comprised between October 1, 1935 and January 22, 1936, both dates inclusive, in the City of Manila, Philippine Islands, and within the jurisdiction of this court, the said Nicasio Osmeña and Jacob Rosenthal, two of the ten promoters, organizers, founders and incorporators of, the former being, in addition, one of the members of the board of directors of, the O. R. O. Oil Co., Inc., a domestic corporation organized under the laws of the Philippines and registered in the mercantile registry of the Bureau of Commerce, with central office in the said city, the main objects and purposes of which were 'to mine, dig for, or otherwise obtain from earth, petroleum, rock or carbon oils, natural gas, other volatile mineral substances and salt, and to manufacture, refine, prepare for market, buy, sell and transport the same in crude or refined condition', and the capital thereof in their articles of incorporation, the accused herein included, consisting of 3,000 shares without par value, 400 shares of which having been subscribed by the said accused at 200 shares each and paid partly by them at the price of only P5 per share, according to the said agreement which shares were speculative securities, because the value thereof materially depended upon proposed promise of future promotion and development of the oil business above mentioned rather than on actual tangible assets and conditions thereof, did then and there, with deliberate intent of evading the provisions of sections 2 and 5 of the said Act No. 2581, and conspiring and confederating together and helping each other, willfully, unlawfully and feloniously trade in, negotiate and speculate with, their shares aforesaid, by making personally or through brokers or agents repeated and successive sales of the said shares at a price ranging from P100 to P300 per share, as follows:

"The accused Nicasio Osmeña sold 163 shares to nine different parties, and the accused Jacob Rosenthal sold 21 shares to seven others, without first obtaining the corresponding written permit or license from the Insular Treasurer of the Commonwealth of the Philippines, as by law required."

"Case No. 52366

"That in or about and during the period comprised between October 1, 1935, and January 22, 1936, both dates inclusive, in the City of Manila, Philippine Islands, and within the jurisdiction of this court, the said Nicasio Osmeña and Jacob Rosenthal, two of the ten promoters, organizers, founders and incorporators of, the former being, in addition, one of the members of the board of directors of, the South Cebu Oil Co., Inc., a domestic corporation organized under the laws of the Philippines and registered in the mercantile registry of the Bureau of Commerce, with central office in the said city, the main objects and purposes of which were 'to mine, dig

for, or otherwise obtain from earth, petroleum, rock or carbon oils, natural gas, other volatile mineral substances and salt, and to manufacture, refine, prepare for market, buy, sell and transport the same in crude or refined condition', and the capital stock of which, as per agreement of all the incorporators thereof in their articles of incorporation, the accused herein included, consisting of 2,800 shares without par value, 200 shares of which having been subscribed by the accused Nicasio Osmeña. and 100 shares of which having been subscribed by the accused Jacob Rosenthal and paid by both at the price of only P5 per share, according to the said agreement, which shares were speculative securities, because the value thereof materially depended upon proposed promise of future promotion and development of the oil business above mentioned rather than on actual tangible assets and conditions thereof, did then and there, with deliberate intent of evading the provisions of sections 2 and 5 of the said Act No. 2581, and conspiring and confederating together and helping one another, willfully, unlawfully and feloniously trade in, negotiate and speculate with, their shares aforesaid, by making personally or through brokers or agents repeated and successive sales of the said shares at a price ranging from P100 to P300 per share, as follows:

"The accused Nicasio Osmeña sold 185 shares to nine different parties, and the accused Jacob Rosenthal sold 12 shares to seven others, without first obtaining the corresponding written permit or license from the Insular Treasurer of the Commonwealth of the Philippines, as by law provided."

Upon motion of Jacob Rosenthal, the Court of First Instance of Manila granted him separate trial although, when the cases were called for hearing, the court acceded to the motion of the prosecution that the two cases be tried jointly inasmuch as the evidence to be adduced by the government therein was the same, without prejudice to allowing the defendants to present their proof separately. After trial, the lower court, on March 22, 1937, in separate decisions, found the defendants guilty as charged in the informations. In case No. 52365 Jacob Rosenthal was sentenced to pay a fine of P500, with subsidiary imprisonment in case of insolvency, and to pay one-half of the costs; Nicasio Osmeña was sentenced to pay a fine of P1,000, with subsidiary imprisonment in case of insolvency, and to pay one-half of the costs. In case No. 52366 Jacob Rosenthal was sentenced to pay a fine of P500, with subsidiary imprisonment in case of insolvency, and to pay one-half of the costs; Nicasio Osmeña was sentenced to pay a fine of P2,000, with subsidiary imprisonment in case of insolvency, and to pay one-half of the costs. The defendants duly perfected their appeal from these judgments and the cases were originally elevated to the Court of Appeals but, upon motion of the Solicitor-General, the same were forwarded to this court in view of the fact that the constitutionality of Act No. 2581 has been put in issue by appellants. Two separate briefs have been filed by Rosenthal and Osmeña. In the brief for appellant Rosenthal the following "joint assignment of errors" is made:

"1. In declaring that according to the report of the geologist contracted by the O. R. Oil Co. and the South Cebu Oil Co. to explore the properties leased to said companies, 'no habia ninguna indicacion de que hubiese petroleo en aquellos terrenos', when in truth what the report stated was that in so far as the O. R. O. Oil Co. land was concerned, the territory covered by the lease is full of possibilities; and with respect to the South Cebu Oil Co. lease, that no further investigations and expenses be made 'unless favorable test results are obtained on the northern lease.'"

"2. In declaring that the exploration leases were, subsequent to the findings of the geologist, cancelled by the government, implying thereby that as no oil was found in said lands, the leases were cancelled; when in truth the cancellation was based on the supposed violation of those provisions of the corporation law prohibiting the setting up of interlocking directorates.

"3. In declaring that the defendant, of his 200 shares of stock in the O. R. O. Oil Co., sold twenty-one shares to different persons and on different dates, one share having been sold directly to one E. F. Pimley.; five, thru a firm of brokers known as Mackay & McCormick, to Arthur Hoyer, Wm. Scheunig, and Modesto Bautista, in the proportion of two, two and one, respectively; and fifteen shares directly to Henry J. Belden, R. T.

Fitzimmons and D. P. O'Brien, in the proportion of five shares to each of them— when in truth only that to E. F. Pimley was sold to the latter by the defendant, while those eventually transferred to Hoyer, Scheunig and Bautista were sold directly to the said firm Mackay & McCormick, which bought them on its own risk and account, and the remaining fifteen transferred to Belden, O'Brien, and Fitzimmons were loaned by Rosenthal to Nicasio Osmeña, who has not until now either returned those shares or paid their value.

"4. In also declaring that of his 100 shares of stock in the South Cebu Oil Co., the defendant sold twelve to various persons and on different dates, when in truth only one of these shares was sold by the defendant to E. F. Pimley, and the remaining eleven, two of which were transferred to Arthur Hoyer, two to William Scheunig, one to Jose de la Fuente, one to Crispin Llamado, one to A. M. Opisso, and four to Ines Galano, were sold and transferred, in one single transaction, to the said firm of brokers directly, which firm bought said shares on its own risk and account.

"5. In declaring that the shares sold to Mackay & McCormick were bought by the latter on credit at P250 each, to be resold by it at P300 each, and that out of the proceeds of the sale of these shares the defendant received the price agreed upon between him and the said brokerage firm, or P250 per share, when in truth and in fact there was no agreement between the parties as to whether the said firm was to sell said shares to others or whether those shares were to be kept and retained by it on its own risk and account.

"6. In declaring that the corporations had not begun exploration work on the territory covered by their leases, and that they had no tangible properties.

"7. In declaring that while the defendant needed no permit to sell his own stock, the corporations as issuer being the ones bound to obtain the permit required by the Blue Sky Law, nevertheless he (the defendant) was guilty of a violation of said law because the possession of the shares held and sold by him was not in good faith, in that his acquisition thereof was not made in the ordinary and normal course of the business of the corporations, but that said shares were purchased to indirectly promote the enterprise for which the corporations were formed; the said defendant having paid in full to the corporations the value of said shares of stock.

"8. In holding as proven that the possession of the defendant of his own stock, which he paid for in full, was not a possession in good faith, because he, as an incorporator (fundador), should have known that no permit in writing had been issued the corporations by the Insular Treasurer for the sale of said stock.

"9. In overruling the objection to the admission of Exhibit 1-b, and in holding that a permit had not been issued by the Insular Treasurer for the sale of the stocks of the corporations.

"10. In holding that there were repeated and successive sales made by defendant Rosenthal of his own shares of stock.

"11. In holding that although the defendant was the absolute owner of the stock he sold, his repeated and successive sales of such stock prove that this claim of ownership (esta pretension de propiedad) was but a means employed by him to sell said stock at prices very much higher than those he paid for them.

"12. In holding that said stock was sold by the defendant without the required permit having been first issued by the Insular Treasurer, and that the sale was effected as if such permit had been actually issued (como si en realidad pudieran venderse por haberse expedido tal permiso).

"13. In holding that as a result of an investigation conducted by the City Fiscal, the defendant refunded to Belden, O'Brien and Fitzimmons and others the amount they paid for the stock they purchased.

"14. In holding that the opinion given by the Chief of the Insurance Division of the Office of the Insular Treasurer to the effect that the defendant could sell the said stock without a permit as long as no false representations were made by the said defendant, can not and does not exempt the latter from criminal

responsibility even though no false representations whatsoever were made by the aforesaid defendant.

"15. In not holding that the prima facie presumption in section 8 of the law to the effect that the claim of ownership is not bona fide when repeated and successive sales of such stock are effected, has been totally destroyed by the fact that said stock absolutely belongs to the defendant, and in not further holding that because of such absolute ownership the defendant could have legally disposed of such stock in as many sales as he saw fit without any permit from the Insular Treasurer.

"16. In not holding that the Blue Sky Law contravenes the constitutional provisions of the Jones Act in so far as such law constitutes an undue delegation of legislative powers to the Insular Treasurer, and in so far as it does not afford equal protection before the law.

"17. In not absolving the defendant."

In the brief for appellant Osmeña the following "relation conjunta de errores" is in turn submitted:

"1. Al no sobreeser esta causa despues de promulgada la Ley No. 83 del Commonwealth, no obstante haberse llamado su atencion al hecho de que esta Ley derogaba la Ley No. 2581 de la Legislatura Filipina, bajo cuyas disposiciones ha sido procesado el acusado.

"2. Al condenar al acusado por infraccion de la 'Blue Sky Law', no obstante reconocerse en la decision que consta en las pruebas que el acusado Osmena no ha ofrecido en venta ninguna de aquellas acciones, ni ha hecho manifestaciones falsas a nadie para poder venderlas, y que la mayor parte, si no todos los que las compraron, estaban satisfechos de la inversion de su dinero en la adquisicion de tales acciones.

"3. Al condenar al acusado por haber vendido acciones especulativas sin licencia, cuando no se probó: (a) que las acciones de la O. R. O. Oil Co., Inc., y de la South Cebu Oil Co., Inc., eran especulativas por su naturaleza, y (b) que el acusado Osmeña carecia de licencia para venderlas.

"4. Al declarar que la posesion por el acusado Osmena de sus acciones de la O. R. O. Oil Co., Inc., y de la South Cebu Oil Co., Inc., no era de buena fe y que no las habia adquirido por su propia cuenta sino para la promocion indirecta de un proyecto de negocio o empresa especulativa.

"5. Al no declarar que la 'Blue Sky Law' es contraria a las normas constitucionales que gozaba al tiempo de su promulgation: (1) porque contiene en sus disposiciones una delegation indebida de facultades legislativas; (2) porque es vaga e incierta en sus disposiciones y, por tanto, nula; y (3) porque infringe el derecho de igual proteccion ante la ley, viola la libertad de contratacion y contraviene el derecho de adquirir, gozar y disponer libremente de la propiedad privada, siendo su promulgation, por tanto, un acto de opresion y de verdadera tirania.

"6. Al no absolver al acusado Nicasio Osmeña."

To meet the foregoing errors assigned by the appellants, plaintiff-appellee contends:

" (a) That the enactment of Commonwealth Act No. 83 did not have the effect of relieving appellants from criminal liability.

"(b) That the appellants acted as promoters of the O. R. O. Oil Co. and the South Cebu Oil Co.

"(c) That the shares of the two corporations are speculative in nature.

"(d) That the appellants sold their shares in said corporations without permit or knowing that the latter did not have the permit required by law.

"(e) That the appellants are not entitled to the exemption provided in section 8 of the Blue Sky Law (Act No. 2581).

" (f) That the Blue Sky Law is valid and constitutional."

Most of the errors assigned by the appellants deal with questions of fact. This is particularly true with reference to errors one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve and thirteen of appellant Jacob Rosenthal, and error four of appellant Nicasio Osmeña. There is no material discrepancy regarding the facts, and we shall proceed to consider the legal questions propounded, which are in the main set forth by the Solicitor-General in his brief.

It is contended by the appellants that Act No. 2581 is unconstitutional on three grounds. (1) That it constitutes an undue delegation of legislative authority to the Insular Treasurer: (2) that it does not afford equal protection before the law; and (3) that it is vague and ambiguous.

Under section 2 of Act No. 2581, every person, partnership, association, or corporation attempting to offer to sell in the Philippines speculative securities of any kind or character whatsoever, is under obligation to file previously with the Insular Treasurer the various documents and papers enumerated therein and to pay the required tax of twenty pesos. Certain securities listed in section 3 are exempted from the operation of the Act. Section 5 imposes upon the Insular Treasurer the mandatory duty to examine the statements and documents thus filed and the additional duty to make or cause to be made, if deemed advisable by him, a detailed examination of the affairs of the applicant. Section 5 also provides that "whenever the said Treasurer of the Philippine Islands is satisfied, either with or without the examination herein provided, that any person, partnership, association or corporation is entitled to the right to offer its securities as above defined and provided for sale in the Philippine Islands, he shall issue to such person, partnership, association or corporation a certificate or permit reciting that such person, partnership, association or corporation has complied with the provisions of this Act, and that such person, partnership, association or corporation, its brokers or agents are entitled to order the securities named in said certificate or permit for sale"; that "said Treasurer shall furthermore have authority, whenever in his judgment it is in the public interest, to cancel said certificate or permit", and that "an appeal from the decision of the Insular Treasurer may be had within the period of thirty days to the Secretary of Finance."

Appellants argue that, while Act No. 2581 empowers the Insular Treasurer to issue and cancel certificates or permits for the sale of speculative securities, no standard or rule is fixed in the Act which can guide said official in determining the cases in which a certificate or permit ought to be issued, thereby making his opinion the sole criterion in the matter of its issuance, with, the result that, legislative powers being unduly delegated to the Insular Treasurer, Act No. 2581 is unconstitutional. We are of the opinion that the Act furnishes a sufficient standard for the Insular Treasurer to follow in reaching a decision regarding the issuance or cancellation of a certificate or permit. The certificate or permit to be issued under the Act must recite that the person, partnership, association or corporation applying therefor "has complied with the provisions of this Act", and this requirement, construed in relation to the other provisions of the law, means that a certificate or permit shall be issued to the Insular Treasurer when the provisions of Act No. 2581 have been complied with. Upon the other hand, the authority of the Insular Treasurer to cancel a certificate or permit is expressly conditioned upon a finding that such cancellation "is in the public interest." In view of the intention and purpose of Act No. 2581—to protect the public against "speculative schemes which have no more basis than so many feet of blue sky" and against the "sale of stock in fly-by-night concerns, visionary oil wells, distant gold mines, and other like fraudulent exploitations",—we incline to hold that "public interest" in this case is a sufficient standard to guide the Insular Treasurer in reaching a decision on a matter pertaining to the issuance or cancellation of certificates or permits. As we observed in the case of *People vs. Fernandez and Trinidad* (G. R. No. 45655, June 15, 1938), "siendo el objeto de la ley el evitar especulaciones ruinosas, es claro que el interes publico, es, y debe ser la razon en que el Tesorero Insular deba basar sus resoluciones." And the term "public interest" is not without a settled meaning.

"Appellant insists that the delegation of authority to the Commission is invalid because the stated criterion is uncertain. That criterion is the public interest. It is a mistaken assumption that this is a mere general reference to public welfare without any standard to guide determinations. The purpose of the Act, the requirement it imposes, and the context of the provision in question show the contrary. * * *" (New York Central Securities Corporation vs. U. S. A., 287 U. S., 12, 24, 25; 77 Law. ed., 138, 145, 146.) (See also Schenchter Poultry Corporation vs. U. S., 295 U. S. 1., 495; 540; 79 Law. ed., 1570, 1585; Ferrazzini vs. Gsell, 34 Phil., 697, 711, 712.)

In this connection, we cannot overlook the fact that Act No. 2581 allows an appeal from the decision of the Insular Treasurer to the Secretary of Finance. Hence, it cannot be contended that the Insular Treasurer can act and decide without any restraining influence.

The theory of the separation of powers is designed by its originators to secure action and at the same time to forestall over action which necessarily results from undue concentration of powers, and thereby obtain efficiency and prevent despotism. Thereby, the "rule of law" was established which narrows the range of governmental action and makes it subject to control by certain legal devices. As a corollary, we find the rule prohibiting delegation of legislative authority, and from the earliest time American legal authorities have proceeded on the theory that legislative power must be exercised by the legislature alone. It is frankness, however, to confess that as one delves into the mass of judicial pronouncements, he finds a great deal of confusion. One thing, however, is apparent in the development of the principle of separation of powers and that is that the maximum of *delegatus non potest delegare* or *delegata potestas non potest delegare*, attributed to Bracton (*De Legibus et Consuetudinibus Angliæ*, edited by G. E. Woodbine, Yale University Press [1922], vol. 2, p. 167) but which is also recognized in principle in the Roman Law (D.17.18.3), has been made to adapt itself to the complexities of modern governments, giving rise to the adoption, within certain limits, of the principle of "subordinate legislation", not only in the United States and England but in practically all modern governments. The difficulty lies in the fixing of the limit and extent of the authority. While courts have undertaken to lay down general principles, the safest is to decide each case according to its peculiar environment, having in mind the wholesome legislative purpose intended to be achieved.

Counsel for appellant Jacob Rosenthal also argues that the Insular Treasurer possesses "the discretionary power to determine when a security is a speculative security and when it is not" because "he is given the power to compel any corporation, association or partnership already functioning, to surrender to him for examination its books and accounts enumerated in section 2, 'whenever he has reasonable ground to believe that the securities being sold or offered for sale are of a speculative character.' " It should be observed, however, that section 1 of Act No. 2581 defines and enumerates what are "speculative securities" and all the other provisions of the Act must be read and construed in conjunction and harmony with said section.

Laws of the different states of the American Union similar in nature to Act No. 2581 were assailed on constitutional grounds somewhat analogous to those involved in the case at bar, but the decisions of both the state courts and the Supreme Court of the United States have upheld their constitutionality. In the case of *Hall vs. Geiger-Jones Co.* (242 U. S., 539), the contention was made that the Blue Sky Law of Ohio, which requires the commissioner before granting a license to "be satisfied of the good repute in business of such applicant and named agents", and which empowers said commissioner to revoke the license or refuse to renew it upon ascertaining that the licensee "is of bad business repute; has violated any provisions of this act or has engaged, or is about to engage, under favor of such license, in illegitimate business or in fraudulent transactions", is unconstitutional because the law has failed to give a standard to guide or determine the decision of the commissioner leaves "room for the play and action of purely personal and arbitrary power", but the Supreme Court of the United States overruled the contention and held:

"Besides it is certainly apparent that if the conditions are within the power of the State to impose, they can only be ascertained by an executive officer. Reputation and character are quite tangible attributes, but there can be no legislative definition of them that can automatically attach to or identify individuals possessing them, and necessarily the aid of some executive agency must be invoked. The contention of appellees would take from government one of its most essential instrumentalities, of which the various national and state commissions are instances. But the contention may be answered by authority. In *Gundling vs. Chicago* (177 U. S., 183), an ordinance of the City of Chicago was passed on which required a license of dealers in cigarettes and as a condition of the license that the applicant, if a single individual, all of the members of the firm, if a copartnership, and any person or persons in charge of the business, if a corporation, should be of good character and reputation, and the duty was delegated to the mayor of the city to determine the existence of the conditions. The ordinance was sustained. To this case may be added *Red 'C' Oil Manufacturing Co. vs. North Carolina* (222 U. S., 380, 394, and cases cited); *Mutual Film Corporation vs. Industrial Commission of Ohio* (236 U. S., 230); *Brazee vs. Michigan* (241 U. S., 340, 341)." See also *Reetz vs. Michigan*, (188 U. S., 505); *Lieberman vs. Van de Carr* (199 U. S., 552). (Pp. 553, 554.)

In the case of *Leach vs. Daugherty* (238 P., 160), where the contention was advanced that section 6 of the Corporate Securities Act of California which authorized the corporation commissioner to refuse to grant a broker's certificate, if he is not satisfied of the "good business reputation of the applicant", is unconstitutional because "no rules, regulations, or specifications are set forth in the said Corporate Securities Act defining what shall constitute 'good business reputation,' " it was ruled that "Considering such objection, it would appear that the leading case of *Hall vs. Geiger-Jones Co.* (242 U. S., 539; 37 Sup. Ct., 217; 61 Law. ed., 480; L. R. A., 1917F, 514; Ann. Cas. 1917C, 643), is so conclusively against the petitioners' contention that little room is left for argument", and that "it is well-settled principle of law in this state that by legislative act a commission or board may be empowered to ascertain the existence of facts, upon the finding of which may depend the right to continue in the practice of a profession or a regulated business."

In the case of *G. F. Redmond & Co. vs. Michigan Securities Commission* (222 Mich., 1; 192 N. W., 688), in which it was argued that the provision in section 11955 of the Compiled Laws of 1915 (Michigan Blue Sky Law), authorizing the commission to revoke a license for "good cause" upon notice to the dealer and a hearing duly had, is unconstitutional because the term "good cause" is so vague and indefinite that the law practically vested upon the commission arbitrary powers, the court said:

"The term 'good cause' for revocation, as employed in the statute, relates so clearly to the conduct of the licensed business, within the limits fixed by law, as to negative any arbitrary official action, and is so comprehensive of unlawful, irregular, fraudulent, unauthorized, and forbidden business management and transactions conducted as to demand no more particular specification of its meaning and its application.

"Must the law map out, for the guidance of the licensee, a code of ethics and post danger signals against inhibited and dishonest practices? The defendant had no right to have the conduct of its business charted by specifications of forbidden practices involving revocation of the license. The general scope and expressed purpose of the law, together with open and fair dealing, entered the license, and transgression thereof constituted good cause for revocation thereof." (P. 689.)

In the case of *State ex rel. Central Steam Heat & Power Co. vs. Gettle* (Wis. [1928], 220 N. W., 201), where it was argued that the requirement of the Wisconsin Blue Sky Law (St. 1925, sec. 184.09 [3]; Law 1927, c. 414) that the Railroad Commission shall find that the "financial condition, plan of operation, and the proposed undertakings of the corporation are such as to afford reasonable protection to the purchasers of the securities to be issued", is unconstitutional for the reason that (1) the Legislature has no power to regulate the issuance of securities in order to protect the investing public; (2) the Legislature does not provide a standard to control the commission; (3) the statute is so indefinite and uncertain in its meaning as to be incapable of administration; and (4) the statute

delegates to the railroad commission legislative power, the court said:

"This is but a usual provision found in the many so-called Blue Sky Laws, the constitutionality of which has been upheld by the courts generally. The constitutionality of similar provisions has been so thoroughly considered by this court that further discussion thereof is unnecessary. The following cases abundantly establish the constitutionality of this provision. (State ex rel. Minneapolis, St. Paul & Sault Ste. Marie Railway Company vs. Railroad Commission of Wisconsin, 137 Wis., 80; 117 N. W., 846; Appleton Water Works Co. vs. Railroad Commission of Wisconsin, 154 Wis., 121; 142 N. E., 476; 47 L. R. A. [N. S.], 770; Ann. Cas. 1915B, 1160; State ex rel. City of Milwaukee vs. Milwaukee Electric Railway & Light Co., 169 Wis., 183; 172 N. W., 230; City of Milwaukee vs. Railroad Commission of Wisconsin, 183 Wis., 498; 196 N. W., 853; Wisconsin Southern Ry. Co. vs. Railroad Commission of Wisconsin, 185 Wis., 313; 201 N. W., 244; Kretzger vs. Westfahl, 187 Wis., 463; 204 N. W., 595.)"

Another ground relied upon by appellants in contending: that Act No. 2581 is unconstitutional is that it denies equal protection of the laws because the law discriminates between an owner who sells his securities in a single transaction and one who disposes of them in repeated and successive transactions. In disposing of this contention we need only refer to the case of *Hall vs. Geiger-Jones Co.*, supra, wherein the Supreme Court of the United States held:

"Discriminations are asserted against the statute which extend, it is contended, to denying appellees the equal protection of the laws. Counsel enumerates them as follows:

"Prominent among such discriminations are * * * between an owner who sells his securities in a single transaction and one who disposes of them in successive transactions; * * *"

"We cannot give separate attention to the asserted discriminations. It is enough to say that they are within the power of classification which a state has. A state 'may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses, and it may do so none the less that the forbidden act does not differ in kind from those that are allowed * * *. If a class is deemed to present a conspicuous example of what the legislature seeks to prevent, the 14th Amendment allows it to be dealt with although otherwise and merely logically not distinguishable from others not embraced in the law.'"

Counsel for appellant Nicasio Osmeña further alleges that Act No. 2581 is unconstitutional on the ground that it is vague and uncertain. A similar contention has already been overruled by this court in the case of *People vs. Fernandez and Trinidad*, supra. An Act will be declared void and inoperative on the ground of vagueness and uncertainty only upon a showing that the defect is such that the courts are unable to determine, with any reasonable degree of certainty, what the legislature intended. The circumstance that this court has on more than one occasion given effect and application to Act No. 2581 (*Valhalla Hotel Construction Co. vs. Carmona*, 44 Phil., 235; *People vs. Nimrod McKinney*, 47 Phil., 792; *People vs. Fernandez and Trinidad*, supra) decisively argues against the position taken by appellant Osmeña. In this connection we cannot pretermit reference to the rule that "legislation should not be held invalid on the ground of uncertainty if susceptible of any reasonable construction that will support and give it effect. An Act will not be declared inoperative and ineffectual on the ground that it furnishes no adequate means to secure the purpose for which it is passed, if men of common sense and reason can devise and provide the means, and all the instrumentalities necessary for its execution are within the reach of those intrusted therewith." (25 R. C. L., pp. 810, 811.)

Reaffirming our view in *People vs. Fernandez and Trinidad*, supra, we hold that Act No. 2581 is valid and constitutional.

Taking up now the question raised with reference to the speculative nature of the shares of the O. R. O. Oil Co. and the South Cebu Oil Co., we find that section 1, paragraph (b) of Act No. 2581, in defining speculative

securities, provides:

"* * * The term 'speculative securities' as used in this Act shall be deemed to mean and include:

* * * * *

"(b) All securities the value of which materially depend upon proposed or promised future promotion or development rather than on present tangible assets and conditions."

At the beginning, and at the time of the issuance of the shares of the O. R. O. Oil Co. and the South Cebu Oil Co., all that these companies had were their exploration leases. Beyond this, there was nothing tangible. The value of those shares depended upon future development and the uncertainty of "striking" oil. The shares issued under these circumstances are clearly speculative because they depended upon proposed or promised future promotion or development rather than on present tangible assets and conditions.

Appellants next contend that in view of the repeal of Act No. 2581 by Commonwealth Act No. 83, they have been relieved of criminal responsibility. Assuming that the former Act has been entirely and completely abrogated by the latter Act—a point we do not have to decide—this fact does not relieve appellants from criminal responsibility. "It has been the holding, and it must again be the holding, that where an Act of the Legislature which penalizes an offense repeals a former Act which penalized the same offense, such repeal does not have the effect of thereafter depriving the courts of jurisdiction to try, convict and sentence offenders charged with violations of the old law." (People vs. Concepcion, 44 Phil., 126, 132; Ong Chang Wing and Kwong Fok vs. U. S., 218 U. S., 272; 40 Phil., 1046; U. S. vs. Cuna, 12 Phil., 241; U. S. vs. Aron, 12 Phil., 778; U. S. vs. Tonga, 15 Phil., 43; U. S. vs. Molina, 17 Phil., 582.)

Appellants further contend that they come under the exception provided in section 8 of Act No. 2581. This section provides:

"This Act shall not apply to the holder of any speculative security who is not the issuer thereof, nor to the person who has acquired the same for his own account in the usual and ordinary course of business and not for the direct or indirect promotion of any enterprise or scheme within the purview of this Act, unless such possession is in good faith. Repeated and successive sales of any such speculative securities shall be prima facie evidence that the claim of ownership is not bona fide, but is a mere shift, device or plot to evade the provisions of this (Act. Such speculators shall incur the penalty provided for in section seven of this Act."

Under this section, there are clearly two classes of persons to whom the law is not applicable: (1) Persons who hold speculative securities but who are not the issuers thereof; and (2) persons who have acquired the same for their own account in the usual and ordinary course of business and not for the direct or indirect promotion of any enterprise or scheme within the purview of this Act, provided (the law uses the term "unless") such possession is in good faith.

Passing upon the questions of fact necessarily involved in the application of section 8 of Act No. 2581, the trial court in case No. 52365 makes the following findings with reference to Nicasio Osmeña:

"* * * El acusado Osmeña no ha adquirido por su propia cuenta en el curso ordinario y corriente de los negocios en la O. R. O. Oil Co. Las acciones por el vendidas, pues las adquirio mediante suscripcion como uno de los fundadores de dicha corporacion, pero si para la promocion indirecta de un proyecto de negocio o empresa para el cual se habia organizado la corporacion, habiendo pagado totalmente el importe de dichas acciones a la misma corporacion; ni tampoco las poseia de buena fe, puesto que como fundador y miembro de la junta directiva de dicha corporacion debia saber que no se habia expedido por el Tesorero Insular ningun permiso por escrito a la corporacion para la venta de dichas acciones. Y las ventas sucesivas y repetidas de esas acciones que tenia en la misma corporacion, aunque tales acciones eran suyas por haberlas el obtenido de la

corporacion mediante suscripcion y pago del importe correspondiente prueban que esta pretension de propiedad ha sido solamente un medio de que se ha valido para vender tales acciones a precios mucho mayores que el importe por el cual las habia adquirido mediante suscripcion, sin haberse expedido previamente por el Tesorero Insular el permiso exigido por la ley, como si en realidad pudieran venderse por haberse expedido tal permiso."

The same findings, *mutatis mutandis*, are made in case No. 52366 against the same appellant, and against Jacob Rosenthal in the two cases. Even if we could, we do not feel justified in disturbing the findings of the trial court. The good faith set up by appellant Rosenthal for having acted on the advice of one Garcia, an officer in the Insular Treasury, and the subsequent devolution by him of amounts collected from some of the purchasers of the shares may be considered as a circumstance in his favor in the imposition of the penalty prescribed by law but does not exempt him from criminal responsibility. (*People vs. McCalla*, 63 Cal App., 783; 220 Pac, 436; 367 U. S., 585; 69 Law. ed., 799; 45 Sup. Ct, 461; *People vs. Fernandez and Trinidad*, *supra*.)

The judgments of the lower court are affirmed, with the modification that the fines are reduced as to accused Jacob Rosenthal from P500 to P200 in each case, and as to accused Nicasio Osmena, from P1,000 to P500 in case No. 62365 and from P2,000 to P1,000 in case No. 52366, with subsidiary imprisonment for both in case of insolvency, and costs. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Concepcion, and Moran, JJ., concur.

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