8 Phil. 125

**[ G.R. No. 3473. March 22, 1907 ]**

**J. CASANOVAS, PLAINTIFF AND APPELLANT, VS. JNO. S. HORD, DEFENDANT AND APPELLEE.**

**D E C I S I O N**

**WILLARD, J.:**

The plaintiff brought this action against the defendant, the Collector of Internal Revenue, to recover the sum of P9,600, paid by him under protest as taxes on certain mining claims owned by him in the Province of Ambos Camarines. Judgment was rendered in the court below in favor of the defendant, and from that judgment the plaintiff appealed.

There is no dispute about the facts.

In January, 1897, the Spanish Government, in accordance with the provisions of the royal decree of the 14th of May, 1867, granted to the plaintiff certain mines in the said Province of Ambos Camarines, of which mines the plaintiff is now the owner.

That these were valid perfected mining concessions granted prior to the 11th of April, 1899, is conceded. They were so considered by the Collector of Internal Revenue and were by him said to fall within the provisions of section 134 of Act No. 1189, known as the Internal Revenue Act. That section is as follows:

> "SEC. 134. On all valid perfected mining concessions granted prior to April eleventh, eighteen hundred and ninety-nine, there shall be levied and collected on and after January first, nineteen hundred and five, the following taxes:
>
> "1. (*a*) On each claim containing an area of sixty thousand square meters, an annual tax of one hundred pesos; (*b*) and at the same rate proportionately on each claim containing an area in excess of, or less than, sixty thousand square meters.

> "2. On the gross output of each mine an ad valorem tax equal to three per centum of the actual market value of such output."

The defendant accordingly imposed upon these properties the tax mentioned in section 134, which tax, as has before been stated, plaintiff paid under protest.

The only question in the case is whether this section 134 is void or valid.

I. It is claimed by the plaintiff that it is void because it comes within the provision of section 5 of the act of Congress of July 1, 1902[1] (32 U. S. Stat. L., 691), which provides "that no law impairing the obligation of contracts shall be enacted." The royal decree of the 14th of May, 1867, provided, among other things, as follows:

> "ART. 76. On each *pertenencia minera* (mining claim) of the area prescribed in the first paragraph of article 13 (sixty thousand square meters) there shall be paid annually a fixed tax of forty *escudos* (about P20.00). The *pertenencias* referred to in the second paragraph of the same article, though of greater area than the others (one hundred and fifty thousand square meters), shall pay only twenty *escudos* (about P10.00)."
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> "ART. 78. *Pertenencias* of iron mines and mines of combustible minerals shall be exempt from the annual tax for a period of thirty years from the date of publication of this decree."
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> "ART. 80. A further tax of three per centum on the gross earnings shall be paid without deduction of costs of any kind whatsoever. All substances enumerated in section one shall be exempt from said tax of three per centum for a period of thirty years.
>
> "ART. 81. No other taxes than those herein mentioned shall be imposed upon mining and metallurgical industries."

The royal decree and regulation for its enforcement provided that the deeds granted by the Government should be in a particular form, which form was inserted in the regulations. It must be presumed that the deeds granted to the plaintiff were made as provided by law, and, in fact, one of such concessions was exhibited during the argument in this court, and

was found to be in exact conformity with the form prescribed by law. The deed is as follows:

> "Don Camilo Garcia de Polavieja, Marques de Polavieja, Teniente General de los Ejercitos Nacionales, Caballero Gran Cruz de la Real y Militar Orden de San Hermenegildo, de la Real y distinguida de Isabel la Catolica, de la del Merito Militar Roja, de la de la Corona de Italia, Comendador de Carlos Tercero, Benemerito de la Patria en grado eminente, condecorado con varias cruces de distincion por meritos de guerra, Capitan General y Gobernador General de Filipinas.
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> "Whereas I have granted to Don Joaquin Casanovas y Llovet and to Don Martin Buck the concession of a gold mine entitled "Nueva California Segunda" in the jurisdiction of Paracale, Province of Ambos Camarines: Now, therefore, in the name of His Majesty the King (whom God preserve), and pursuant to the provisions of article 37 of the royal decree of May 14, 1867, regulating mining in these Islands, I issue, this fifth day of November, eighteen hundred and ninety-six, this title deed to four *pertenencias*, comprising an area of two hundred and forty thousand square meters, as shown in the attached sketch map drafted by the engineer Don Enrique Abella y Casariego, and dated at Manila December sixteenth of the said year, subject to the following general terms and conditions:
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> "1. That the mine shall be worked in conformity with the rules of mining, the grantee and his laborers to be governed by the police rules established by existing regulations.
>
> "2. That the grantee shall be liable for all damages to third parties that may be caused by his operations.
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> "3. That the grantee shall likewise indemnify his neighbors for any damage they may suffer by reason of water accumulated on his works, if, upon being requested, he fail to drain the same within the time indicated.
>
> "4. That he shall contribute for the drainage of the adjacent mines and for the general galleries for drainage or haulage in proportion to the benefit he derives therefrom, whenever, by authority of the Governor-General, such works shall be opened for a group of *pertenencias* or for the entire mining locality in which the mine is situated.

"5. That he shall commence work on the mine immediately upon receipt of this concession unless prevented by *force majeure*.

"6. That he shall keep the mine in active operation by employing at the rate of at least four laborers for each *pertenencia* for at least six months of each year.

"7. That he shall strengthen the walls of the mine within the time indicated whenever, by reason of mismanagement of the work, it threatens to cave in, unless he be prevented by *force majeure*.

"8. That he shall not render further profitable development of the mine difficult or impossible by avaricious operation.

"9. That he shall not suspend the operation of the mine with the intention of abandoning the same without first informing the Governor of his intention, in which case he must leave the mine in a good state of timbering.

"10. That he shall pay taxes on the mine and its output as prescribed in the royal decree.

"11. Finally, that he shall comply with all the requirements contained in the royal decree and in the regulations for concessions of the same nature as the present.

"Without special conditions.

"Now, therefore, by virtue of this title deed, I grant to Don Joaquin Casanovas y Llovet and to Don Martin Buck the ownership of the said mine for an unlimited period of time so long as they shall comply with the foregoing terms and conditions, to the end that they may develop the same and make free use and disposition of the output thereof, with the right to alienate the said mine subject to the provisions of existing laws, and to enjoy all the rights and benefits conceded to such grantees by the royal decree and by the mining regulations. And for the prompt fulfillment and observance of the said conditions, both on the part of the said grantees and by all authorities, courts, corporations, and private persons whom it may concern, I have ordered this title deed to be issued—given under my hand and the proper seal and countersigned by the undersigned Director-General of Civil Administration."

It seems very clear to us that this deed constituted a contract between the Spanish Government and the plaintiff, the obligation of which contract was impaired by the enactment of section 134 of the Internal Revenue Law above cited, thereby infringing the provisions above quoted from section 5 of the act of Congress of July 1, 1902. This conclusion seems necessarily to result from the decisions of the Supreme Court of the United States in similar cases. In the case of McGee *vs*. Mathis (4 Wallace, 143), it appeared that the State of Arkansas, by an act of the legislature of 1851, provided for the sale of certain swamp lands granted to it by the United States; for the issue of transferable scrip receivable for any lands not already taken up at the time of selection by the holder; for contracts for the making of levees and drains, and for the payment of contractors in scrip and otherwise. In the fourteenth section of this act it was provided that—

> "To encourage by all just means the progress and completion of the reclaiming of such lands by offering inducements to purchasers and contractors to take up said lands, all said swamp and overflowed lands shall be exempt from taxation for the term of ten years or until they shall be reclaimed."

In 1855 this section was repealed and provision was made by law for the taxation of swamp and overflowed lands, sold or to be sold, precisely as other lands. McGee, before this repeal, had become the owner by transfer from contractors of a large amount of scrip issued under the Act of 1851, and with this scrip, after the repeal, took up and paid for many sections and parts of sections of the granted lands. Taxes were levied by the State on the lands so taken up by McGee. The Supreme Court held that these taxes could not be collected. The Court said at page 156:

> "It seems quite clear that the Act of 1851 authorizing the issue of land scrip constituted a contract between the State and the holders of the land scrip issued under the act."

In the case of the Home of the Friendless *vs*. Rouse (8 Wallace, 430), it appeared that on the 3d day of February, 1853, the legislature of Missouri passed an act to incorporate the Home of the Friendless in the city of St. Louis. Section 1 of that act provided that—

> "All property of said corporation shall be exempt from taxation."

The court held that the State had no power afterwards to pass laws providing for the levying of taxes upon this institution. The Court said among other things at page 438:

> "The validity of this contract is questioned at the bar on the ground that the legislature had no authority to grant away the power of taxation. The answer to this position is, that the question is no longer open for argument here, for it is settled by the repeated adjudications of this court, that a State may by contract based on a consideration exempt the property of an individual or corporation from taxation, either for a specified period or permanently. And it is equally well settled that the exemption is presumed to be on sufficient consideration, and binds the State if the charter containing it is accepted."

In the case of The Asylum *vs*. The City of New Orleans (105 U. S., 362), it appears that St. Ariva's Asylum was incorporated by an act of the legislature of Louisiana, approved April 29, 1853. The law incorporating it provided that it should enjoy the same exemption from taxation which was enjoyed by the Orphan Boys' Asylum of New Orleans. The law relating to the last named institution provided (page 364):

> "That, from and after the passage of this act, all the property, real and personal, belonging to the Orphan Boys' Asylum of New Orleans be, and the same is hereby exempted from all taxation, either by the State, parish, or city in which it is situated, any law to the contrary notwithstanding."

It was held that the State had no power by subsequent legislation to impose taxes upon the property of this institution.

That the doctrine announced in these cases is still maintained in that court is apparent from the case of Powers *vs*. The Detroit, Grand Haven and Milwaukee Railway which was decided on the 16th of April, 1906, and reported in 201 U. S., 543. Section 9 of the act of the legislature of Michigan, incorporating the railway company, provided:

> "Said company shall, on or before the 1st day of July, pay to the State treasurer, an annual tax of one per cent on the capital stock of said company, paid in, which tax shall be in lieu of all other taxation."

The court said at page 556:

> "It has often been decided by this court, so often that a citation of authorities is unnecessary, that the legislature of a State may, in the absence of special restrictions in its constitution, make a valid contract with a corporation in respect to taxation, and that such contract can be enforced against the State at the instance of the corporation."

The case at bar falls within the cases hereinbefore cited. It is to be distinguished from the case of the Metropolitan Street Railway Company *vs*. The New York State Board of Tax Commissioners (199 U. S., 1). In that case it was provided by various acts of the legislature, that the companies therein referred to, should pay annually to the city of New York, a fixed amount or percentage, varying from 2 to 8 per cent of their gross earnings. Subsequent legislation imposing additional taxes was sustained by the court. It was sustained on the ground that the prior legislation did not expressly say that the taxes thus provided for should be in lieu of all other taxes. The court said at page 37:

> "Applying these well established rules to the several contracts, it will be perceived that there was no express relinquishment of the right of taxation. The plaintiff in error must rely upon some implication, and not upon any direct stipulation. In each contract there was a grant of privileges, but the grant was specifically of privileges in respect to the construction, operation and maintenance of the street railroad. These were all that in terms were granted. As consideration for this grant, the grantees were to pay something, and such payment is nowhere said to be in lieu of, or as an equivalent or substitute for taxes. All that can be extracted from the language used, was a grant of privileges and a payment therefor. Other words must be written into the contract before there can be found any relinquishment of the power of taxation."

But in the case at bar, there is found not only the provisions for the payment of certain taxes annually, but there is also found the provision contained in article 81, above quoted, which expressly declares that no other taxes shall be imposed upon these mines.

The present case is to be distinguished also from that class of cases of which Grand Lodge *vs*. The City of New Orleans (166 U. S., 143) is a type, and which includes Salt Company *vs*.

East Saginaw (13 Wall., 373) and Welch vs. Cook (97 U. S., 541). In these cases the exemption was a mere bounty and did not form a part of any contract.

The fact that this concession was made by the Government of Spain, and not by the Government of the United States, is not important. (Trustees of Dartmouth College *vs*. Woodward, 4 Wheaton, 518.)

Our conclusion is that the concessions granted by the Government of Spain to the plaintiff, constitute contracts between the parties; that section 134 of the Internal Revenue Law impairs the obligation of these contracts, and is therefore void as to them.

II. We think that this section is also void because in conflict with section 60 of the act of Congress of July 1, 1902. This section is as follows:

> "That nothing in this Act shall be construed to affect the rights of any person, partnership, or corporation, having a valid, perfected mining concession granted prior to April eleventh, eighteen hundred and ninety-nine, but all such concessions shall be conducted under the provisions of the law in force at the time they were granted, subject at all times to cancellation by reason of illegality in the procedure by which they were obtained, or for failure to comply with the conditions prescribed as requisite to their retention in the laws under which they were granted: *Provided,* That the owner or owners of every such concession shall cause the corners made by its boundaries to be distinctly marked with permanent monuments within six months after this act has been promulgated in the Philippine Islands, and that any concessions, the boundaries of which are not so marked within this period shall be free and open to explorations and purchase under the provisions of this act."[1]

This section seems to indicate that concessions, like those in question, can be canceled *only* by reason of illegality in the procedure by which they were obtained, or for failure to comply with the conditions prescribed as requisite for their retention in the laws under which they were granted. There is nothing in the section which indicates that they can be canceled for failure to comply with the conditions prescribed by subsequent legislation. In fact, the real intention of the act seems to be that such concession should be subject to the former legislation and not to any subsequent legislation. There is no claim in this case that there was any illegality in the procedure by which these concessions were obtained, nor is there

any claim that the plaintiff has not complied with the conditions prescribed in the said royal decree of 1867.

III. In view of the result at which we have arrived, it is not necessary to consider the further claim made by the plaintiff that the taxes imposed by article 134 above quoted, are in violation of that part of section 5 of the act of July 1, 1902, which declares "that the rule of taxation in said Islands shall be uniform."

The judgment of the court below is reversed, and judgment is ordered in favor of the plaintiff and against the defendant for P9,600, with interest thereon, at 6 per cent, from the 21st day of February, 1906, and the costs of the Court of First Instance. No costs will be allowed to either party in this court.

After the expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter let the case be remanded to the court from whence it came for proper action. So ordered.

*Arellano, C. J., Torres, Mapa,* and *Tracey, JJ.,* concur.
*Johnson, J.,* dissents.

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[1] I Pub. Laws, 1057.

[1] I Pub. Laws, 1071.

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