

[G.R. No. 48. March 07, 1902]

MILLAT, MARTY & MITJANS ET AL., PLAINTIFFS, VS. THE ATTORNEY-GENERAL, DEFENDANT.

D E C I S I O N

TORRES, J.:

The four plaintiffs brought their respective actions against the resolution passed by the Intendencia General de Hacienda of the former Spanish Government in a decree of August 21, 1895, for the reason that the fine of 20 per cent upon the owners of the contraband silver found aboard the steamer *Don Juan* was made applicable to that part of the silver which was not circulating Mexican currency in the manner prescribed in said decree; and for the reason that the other plaintiffs, Medina, Madariaga, and Garcia Gutierrez were denied recognition as the captors of said silver and were consequently denied the right to a share of the fine imposed by the Intendencia General.

The several complaints have been drawn up in accordance with the special act which controls the maintenance of an action of administrative contention. By order of May 9, 1896, affirmed by order of March 26, 1897, it was directed that the four actions be consolidated. To these complaints the Attorney-General made answer praying the Confirmation of the decree complained of. The action having proceeded according to the due course of law, the written discussion was declared at an end and the period of proofs concluded by order of May 1 of the same year (1897). Subsequently by a further order of the 11th of the same month the parties were ordered to be cited for a decision, together with the setting of a day for the trial. This was the status of the litigation upon the dissolution of the Spanish tribunal which had jurisdiction over the same. The matter was then placed upon the calendar of this court for the setting of a day for trial. Thereupon Attorney J. B. Early appeared on behalf of Don Antonio Iribar and Messrs. Early & Levering on behalf of the Chinaman Sy Guian and demanded that there be paid to Iribar the third part, or such other portion as the law

awarded, of the silver moneys and other properties salvaged from the wreck of the steamer *Don Juan* by said Iribar, who was captain of the steamer *San Antonio*, which effected the salvage of the burned steamer together with its passengers' and cargo, and that there be paid to the Chinaman Sy Guian, owner and manager of the steamer *San Antonio*, that portion of the valuables and effects salvaged which belonged to him for the expenses of the salvage.

The 25th day of February last having been designated for the hearing of this action, on the 10th day of said month the attorneys Montagne & Dominguez, and the Attorney-General presented a writing setting forth that it had been agreed that the plaintiffs Messrs. Millat, Marty & Mitjans should desist from the action pending against the above-mentioned resolution so far as the same concerned themselves, and the said attorneys for that reason moved that the same be deemed dismissed on behalf of their clients and that the resolution of the defunct Intendencia General be declared final and its execution be ordered.

For the purpose of this motion a hearing was had on February 11, and at that hearing the attorneys, Montagne and Early were heard. The latter opposed the dismissal of the litigation and asked that the motion of Messrs. Montagne & Dominguez be denied and that the stipulation made in the name of Millat, Marty & Mitjans be disregarded for the reason that Iribar had a right to the one-third part at least of the silver which was salvaged, and the Chinaman Sy Guian, as owner of the steamer *San Antonio*, likewise had a right to recover the expenses incurred in the salvage and to collect salvage money according to law.

Whatever may be the rights which the captain of the steamer *San Antonio*, Don Antonio Iribar, and the Chinaman Sy Guian, as owner of this steamer, have respectively for the salvage of the destroyed steamer *Don Juan* the action which accrues in favor of each of them should be litigated in a suit which lies in first instance and in no wise in this court, especially not in a suit in the nature of a contentious-administrative action.

There exists no law, either general or special, which confers jurisdiction upon this court under which it can take cognizance as a court of first instance of the questions raised by reason of the salvage of a vessel destroyed by fire and of the expenses incurred by the salvage of the same and of her cargo and passengers.

The actions which might have accrued to the aforesaid Iribar and Sy Guian do not partake of the nature of contentious-administrative proceedings, nor can they be sustained in view of the character of the same, in accordance with the legal procedure provided for a

contentious administrative suit. Article 4 of the law of November 23, 1888, provides conclusively that questions of a civil or criminal character appertaining to the ordinary jurisdiction or to other special jurisdictions are questions which, among others, are not within the cognizance of the contentious-administrative courts; and it is apparent at first sight that the questions which may be raised by the claims made incidentally by the representatives of Iribar and Sy Guian are of a civil nature, inasmuch as the respective rights which are supposed to have been violated are of such character.

Furthermore, the aforesaid Iribar and Sy Guian are not parties, and have never been parties, to the present contentious-administrative suit, since they have filed neither appeal nor complaint, nor have they intervened in any manner in this suit during its entire course from its commencement until the same was closed for the hearing. For this reason there is no legal ground upon which the court may accede to the demands of the said parties, or even take the same into consideration in the decision which will be made at the proper time.

With reference to the petition made by the attorneys Montagne & Dominguez in the name of Messrs. Millat, Marty & Mitjans, dismissing the action and the complaint interposed against the above-mentioned decree of the defunct Intendencia General de Hacienda, and asking for the execution of said decree, with which said petition the Attorney-General agrees, no objection is offered to the granting of the same. The provisions of the law concerning administrative contentions do not prohibit nor are they opposed to the dismissal of an action or complaint filed in accordance with the same, neither do the general provisions of the Law of Civil Procedure, which controls as the law supplementary to the legislation concerning administrative contentions prohibit the parties from desisting from the prosecution of the complaints, claims, or actions they have interposed. On the contrary, expressly authorizing the same, they provide that after certain proceedings had, such dismissals shall be admitted and the suit deemed at an end.

Therefore, by virtue of the foregoing considerations the representatives of Messrs. Millat, Marty & Mitjans must be deemed to have withdrawn from the prosecution of the complaint filed against the resolution made in the decree of August 21, 1895, by the Intendencia General de Hacienda of the former Spanish Government, and it is so decided, with the one-fourth part of the costs incurred in the suit up to folio 488 and those by them or for them incurred subsequent to said point taxed against the said representatives; the motion of counsel for Don Antonio Iribar and the Chinaman Sy Guian is denied, with the costs of the motion taxed against the said parties; and it is directed that this proceeding be called at the next general term in order that it may be set for trial and hearing be had. It is so ordered.

Arellano, C. J., Cooper, Willard, Mapa, and Ladd, JJ., concur.

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