SECOND DIVISION

[G.R. No. 22008. November 3, 1924.]

THE PEOPLE OF THE PHILIPPINE ISLANDS, *plaintiff-appellee*, ***vs.*** **JULIO POMAR**, *defendant-appellant*.

D E C I S I O N

JOHNSON, *J* :

The only question presented by this appeal is whether or not the provisions of sections 13 and 15 of Act No. 3071 are a reasonable and lawful exercise of the police power of the state.

It appears from the record that on the 26th day of October, 1923, the prosecuting attorney of the City of Manila presented a complaint in the Court of First Instance, accusing the defendant of a violation of section 13 in connection with section 15 of Act No. 3071 of the Philippine Legislature. The complaint alleged:

> "That on or about the 27th day of August, 1923, and sometime prior thereto, in the City of Manila, Philippine Islands, the said accused, being the manager and person in charge of *La Flor de la Isabela*, a tobacco factory pertaining to *La Compañia General de Tabacos de Filipinas*, a corporation duly authorized to transact business in said city, and having, during the year 1923, in his employ and service as cigar-maker in said factory, a woman by the name of Macaria Fajardo, whom he granted vacation leave which began on the 16th day of July, 1923, by reason o her pregnancy, did then and there willfully, unlawfully, and feloniously fail and refuse to pay to said woman the sum of eighty pesos (P80), Philippine currency, to which she was entitled as her regular wages corresponding to thirty days before and thirty days after her delivery and confinement which took place on the 12th day of August, 1923, despite and over the demands made by her, the said Macaria Fajardo, upon said accused, to do so."

To said complaint, the defendant demurred, alleging that the facts therein contained did not constitute an offense. The demurrer was overruled, whereupon the defendant answered and admitted at the trial all of the allegations contained in the complaint, and contended that the provisions of said Act No. 3071, upon which the complaint was based, were illegal, unconstitutional and void.

Upon a consideration of the facts charged in the complaint and admitted by the defendant, the Honorable C. A. Imperial, judge, found the defendant guilty of the alleged offense described in the complaint, and sentenced him to pay a fine of P50, in accordance with the provisions of section 15 of said Act, to suffer subsidiary imprisonment in case of insolvency, and to pay the costs.

From that sentence the defendant appealed, and now makes the following assignments of error: That the court erred in overruling the demurrer; in convicting him of the crime charged in the information; and in not declaring section 13 of Act No. 3071 unconstitutional.

Section 13 of Act No. 3071 is as follows:

> "Every person, firm or corporation owning or managing a factory, shop or place of labor of any description shall be obliged to grant to any woman employed by it as laborer who may be pregnant, thirty days vacation with pay before and another thirty days after confinement: *Provided*, That the employer shall not discharge such laborer without just cause, under the penalty of being required to pay to her wages equivalent to the total of two months counted from the day of her discharge."

Section 15 of the same Act is as follows:

> "Any person, firm or corporation violating any of the provisions of this Act shall be punished by a fine of not less than fifty pesos nor more than two hundred and fifty, or by imprisonment for not less than ten days nor more than six months, or both, in the discretion of the court.
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> "In the case of firms or corporations, the presidents, directors or managers thereof or, in their default, the persons acting in their stead, shall be criminally responsible for each violation of the provisions of this Act."

Said section 13 was enacted by the Legislature of the Philippine Islands in the exercise of its supposed police power, with the praiseworthy purpose of safeguarding the health of pregnant women laborers in "factory, shop or place of labor of any description," and of insuring to them, to a certain extent, reasonable support for one month before and one month after their delivery. The question presented for decision by the appeal is whether said Act has been adopted in the reasonable and lawful exercise of the police power of the state.

In determining whether a particular law promulgated under the police power of the state is, in fact, within said power, it becomes necessary, first, to determine what that power is, its limits and scope. Literally hundreds of decisions have been promulgated in which definitions of the police power have been attempted. An examination of all of said decisions will show that the definitions are generally limited to particular cases and examples, which are as varied as they are numerous.

By reason of the constant growth of public opinion in a developing civilization, the term "police power" has never been, and we do not believe can be, clearly and definitely defined and circumscribed. One hundred years ago, for example, it is doubtful whether the most eminent jurist, or court, or legislature would have for a moment thought that, by any possibility, a law providing for the destruction of a building in which alcoholic liquors were sold, was within a reasonable and lawful exercise of the police power. (Mugler *vs*. Kansas, 123 U. S., 623.) The development of civilization, the rapidly increasing population, the growth of public opinion, with a desire on the part of the masses and of the government to look after and care for the interests of the individuals of the state, have brought within the police power of the state many questions for regulation which formerly were not so considered. In a republican form of government public sentiment wields a tremendous influence what the state may or may not do, for the protection of the health and public morals of the people. Yet, neither public sentiment, nor a desire to ameliorate the public morals of the people of the state will justify the promulgation of a law which *contravenes the express provisions of the fundamental law of the people — the constitution of the state*.

A definition of the police power of the state must depend upon the particular law and the particular facts to which it is so applied. The many definitions which have been given by the highest courts may be examined, however, for the purpose of giving us a

compass or guide to assist us in arriving at a correct conclusion in the particular case before us. Sir William Blackstone, one of the greatest expounders of the common law, defines the police power as "the due regulation and domestic order of the kingdom, whereby the inhabitants of a state, like members of a well-governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood, and good manners, and to be decent, industrious, and inoffensive in their respective stations." (4 Blackstone's Commentaries, 162.)

Mr. Jeremy Bentham, in his General View of Public Offenses, gives us the following definition: "Police is in general a system of precaution, either for the prevention of crimes or of calamities. Its business may be distributed into eight distinct branches: (1) Police for the prevention of offenses; (2) police for the prevention of calamities; (3) police for the prevention of endemic diseases; (4) police of charity; (5) police of interior communications; (6) police of public amusements; (7) police for recent intelligence; (8) police for registration."

Mr. Justice Cooley, perhaps the greatest expounder of the American Constitution, says: "The police power is the power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, *not repugnant to the constitution*, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same. . . ." (Cooley's Constitutional Limitations, p. 830.)

In the case of Commonwealth of Massachusetts *vs*. Alger (7 Cushing, 53), we find a very comprehensive definition of the police power of the state. In that case it appears that the colony of Massachusetts in 1647 adopted an Act to preserve the harbor of Boston and to prevent encroachments therein. The defendant unlawfully erected, built, and established in said harbor, and extended beyond said lines and into and over the tide water of the Commonwealth a certain superstructure, obstruction and encumbrance. Said Act provided a penalty for its violation of a fine of not less than $1,000 nor more than $5,000 for every offense, and for the destruction of said buildings, or structures, or obstructions as a public nuisance. Alger was arrested and placed on trial for violation of said Act. His defense was that the Act of 1647 was illegal and void, because it permitted the destruction of private property without compensation. Mr. Justice Shaw, speaking for the court in that case, said: "We think it is a settled principle, growing out of the nature of well-ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it may be so regulated, that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All property in this commonwealth, as well that in the interior as that bordering on tide waters, is derived directly or indirectly from the government and held subject to those general regulations, which are necessary to the common good and general welfare. Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment, as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law, as the legislature, under the governing and controlling power vested in them *by the constitution*, may think necessary and expedient." Mr. Justice Shaw further adds: ". . . The power we allude to is rather the police power, the power vested in the legislature by the constitution, to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, *not repugnant to the constitution*, as they shall judge to be fore the good and welfare of the commonwealth, and of the subjects of the same."

This court has, in the case of Case *vs*. Board of Health and Heiser (24 Phil., 250), in discussing the police power of the state, had occasion to pay: ". . . It is a well settled principle, growing out of the nature of well-ordered and civilized society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property to the rights of the community. All property in the state is held subject to its general regulations, which are necessary to the common good and general welfare. Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations, established by law, as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient. The state, under the police power, is possessed with plenary power to deal with all matters relating to the general health, morals, and safety of the people, *so long as it does not contravene any positive inhibition of the organic law* and providing that such power is not exercised in such manner as to justify the interference of the courts to prevent positive wrong and oppression."

Many other definitions have been given not only by the Supreme Court of the United States but by the Supreme Court of every state of the Union. The foregoing definitions, however, cover the general field of all of the definitions, found in jurisprudence. From all of the definitions we conclude that it is much easier to perceive and realize the existence and sources of the police power than to exactly mark its boundaries, or prescribe limits to its exercise by the legislative department of the government.

The most recent definition which has been called to our attention is that found in the case of Adkins *vs*. Children's Hospital of the District of Columbia (261 U. S., 525). In that case the controversy arose in this way: A children's hospital employed a number of women at various rates of wages, which were entirely satisfactory to both the hospital and the employees. A hotel company employed a woman as elevator operator at $35 per month and two meals a day under healthy and satisfactory conditions, and she did not risk to lose her position as she could not earn so much anywhere else. Her wages were less than the minimum fixed by a board created under a law for the purpose of fixing a minimum wage for women and children, with a penalty providing a punishment for a failure or refusal to pay the minimum wage fixed. The wage paid by the hotel company of $35 per month and two meals a day was less than the minimum wage fixed by said board. By reason of the order of said board, the hotel company, was about to discharge her, as it was unwilling to pay her more and could not giver her employment at that salary without risking the penalty of a fine and imprisonment under the law. She brought action to enjoin the hotel company from discharging her upon the ground that the enforcement of the "Minimum Wage Act" would deprive her of her employment and wages without due process of law, and that she could not get as good a position anywhere else. The constitutionality of the Act was squarely presented to the Supreme Court of the United States for decision.

The Supreme Court of the United States held that said Act was void on the ground that the *right to contract about one's own affairs was a part of the liberty of the individual under the constitution*, and that while there was no such thing as absolute freedom of contract, and it was necessarily subject to a great variety of restraints, yet none of the exceptional circumstances, which at times justify a limitation upon one's right to contract for his own services, applied in the particular case.

In the course of the decision in that case (Adkins *vs*. Children's Hospital of the District of Columbia, 261 U. S., 525), Mr. Justice Sutherland, after a statement of the fact and making reference to the particular law, said:

> "The statute now under consideration is attacked upon the ground that it authorizes an unconstitutional interference with the freedom of *contract* included within the guarantees of the due process clause of the 5th Amendment. That the right to contract about one's affairs is part of the liberty of the individual by this clause is settled by the decisions of this court, and is no longer open to question. Within this liberty are contracts of employment of labor. In making such contracts, generally speaking, the parties have an equal right to obtain from each other the best terms they can as the result of private bargaining. (Allgeyer *vs*. Louisiana, 165 U.S., 578, 591; Adair *vs*. United States, 208 U. S., 161; Muller *vs*. Oregon, 208 U. S., 412, 421).
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> "The law takes account of the necessities of only one party to the contract. It ignores the necessities of the employer by compelling him to pay not less than a certain sum, not only whether the employee is capable of earning it, but irrespective of the ability of his business to sustain the burden, generously leaving him, of course, the privilege of abandoning his business as an alternative for going on at a loss. Within the limits of the minimum sum, he is precluded, under penalty of fine and imprisonment, from adjusting compensation to the differing merits of his employees. It compels him to pay at least the sum fixed in any event, because the employee needs it, but requires no service of equivalent value from the employee. It (the law) therefore undertakes to solve but one-half of the problem. The other half is the establishment of a corresponding standard of efficiency; and this forms no part of the policy of the legislation, although in practice the former half without the latter must lead to ultimate failure, in accordance with the inexorable law that no one can continue indefinitely to take out more than he puts in without ultimately exhausting the supply. The law . . . takes no account of periods of distress and business depression, of crippling losses, which may leave the employer himself without adequate means of livelihood. To the extent that the sum fixed exceeds the fair value of the services rendered, it amounts to a compulsory exaction from the employer for the support of a partially indigent person, for whose condition there rests upon him no peculiar responsibility, and therefore, in effect, arbitrarily shifts to his shoulders a burden which, if it belongs to anybody, belongs to society as a whole.
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> "The feature of this statute which, perhaps more than any other, puts upon it the stamp of invalidity is that it exacts from the employer an arbitrary payment for a purpose and upon basis having no causal connection with his business, or the contract, or the work the employee engages to do. The declared basis, as already pointed out, is not the value of the service rendered, but the extraneous circumstance that the employee needs to get a prescribed sum of money to insure her subsistence, health and morals. . . . The necessities of the employee are alone considered, and these arise outside of the employment, are the same when there is no employment, and as great in one occupation as in another. . . . In principle, there can be no difference between the case of selling labor and the case of selling goods. If one goes to the butcher, the baker, or grocer to buy food, he is morally entitled to obtain the worth of his money, but he is not entitled to more. If what he gets is worth what he pays, he is not justified in demanding

more simply because he needs more; and the shopkeeper, having dealt fairly and honestly in that transaction, is not concerned in any peculiar sense with the question of his customer's necessities. Should a statute undertake to vest in a commission power to determine the quantity of food necessary for individual support, and require the shopkeeper, if he sell to the individual at all, to furnish that quantity at not more than a fixed maximum, it would undoubtedly fall before the constitutional test. The fallacy of any argument in support of the validity of such a statute would be quickly exposed. The argument in support of that now being considered is equally fallacious, though the weakness of it may not be so plain. . . ."

It has been said that the particular statute before us is required in the interest of social justice for whose and freedom of contract may lawfully be subjected to restraint. The liberty of the individual to do as he pleases, even in innocent matters, is not absolute. That liberty must frequently yield to the common good, and the line beyond which the power of interference may not be pressed is neither definite nor unalterable, but may be made to move, within limits not well defined, with changing needs and circumstances.

The late Mr. Justice Harlan, in the case of Adair *vs*. United States (208 U. S., 161, 174), said that the right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell. In all such particulars the employer and the employee have equality of right, *and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract, which no government can legally justify in a free land*, under a constitution which provides that no person shall be deprived of his liberty without due process of law.

Mr. Justice Pitney, in the case of Coppage *vs*. Kansas (236 U. S., 1, 14), speaking for the Supreme Court of the United States, said: ". . . Included in the right of personal liberty and the right of private property — partaking of the nature of each — is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money."

The right to liberty includes the right to enter into contracts and to terminate contracts. In the case of Gillespie *vs*. People (188 Ill., 176, 183-185) it was held that a statute making it unlawful to discharge an employee because of his connection with any lawful labor organization, and providing a penalty therefor, is void, since the right to terminate a contract, subject to liability to respond in a civil action for an unwarranted termination, is within the protection of the state and Federal constitutions which guarantee that no person shall be deprived of life, liberty or property without due process of law. The court said in part: ". . . One citizen cannot be compelled to give employment to another citizen, nor can anyone be compelled to be employed against his will. The Act of 1893, now under consideration, deprives the employer of the right to terminate his contract with his employee. The right to terminate such a contract is guaranteed by the organic law of the state. The legislature is forbidden to deprive the employer or employee of the exercise of that right. The legislature has no authority to

pronounce the performance of an innocent act criminal when the public health, safety, comfort or welfare is not interfered with. The statute in question says that, if a man exercises his constitutional right to terminate a contract with his employee, he shall, without a hearing, be punished as for the commission of a crime.

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> "Liberty includes not only the right to labor, but to refuse to labor, and, consequently, the right to contract to labor or for labor, and to terminate such contracts, and to refuse to make such contracts. The legislature cannot prevent persons, who are *sui juris*, from laboring, or from making such contracts as they may see fit to make relative to their own lawful labor; nor has it any power by penal laws to prevent any person, with or without cause, from refusing to employ another or to terminate a contract with him, subject only to the liability to respond in a civil action for a unwarranted refusal to do that which has been agreed upon. Hence, we are of the opinion that this Act contravenes those provisions of the state and Federal constitutions, which guarantee that no person shall be deprived of life, *liberty* or property without due process of law."

The statute in question is exactly analogous to the "Minimum Wage Act" referred to above. In section 13 it will be seen that no person, firm, or corporation owning or managing a factory, shop, or place of labor of any description, can make a contract with a woman, without incurring the obligation, whatever the contract of employment might be, *unless also promise to pay to such woman employed as a laborer, who may become pregnant, he wages for thirty days before and thirty days after confinement*. In other words, said section creates a term or condition in every contract made by every person, firm, or corporation with any woman who may, during the course of her employment, become pregnant, and a failure to include in said contract the terms fixed by the law, makes the employer criminally liable and subject to a fine and imprisonment. Clearly, therefore, the law has deprived, every person, firm or corporation owning or managing a factory, shop or place of labor of any description within the Philippine Islands, of his right to enter into contracts of employment upon such terms as he and the employee may agree upon. The law creates a *term* in every such contract, without the consent of the parties. Such persons are, therefore, deprived of their liberty to contract. The constitution of the Philippine Islands guarantees to every citizen his *liberty* and one of his *liberties is the liberty to contract*.

It is believed and confidently asserted that no case can be found, in civilized society and well-organized governments, where individuals have been deprived of their property, under the police power of the state, without compensation, *except* in cases where the property in question was used for the purpose of violating some law legally adopted, or constitutes a nuisance. Among such cases may be mentioned" Apparatus used in counterfeiting the money of the state; firearms illegally possessed; opium possessed in violation of law; apparatus used for gambling in violation of law; buildings and property used for the purpose of violating laws prohibiting the manufacture and sale of intoxicating liquors; and all cases in which the property itself has become a nuisance and dangerous and detrimental to the public health, morals and general welfare of the state. In all of such cases, and in many more which might be cited, the destruction of the property is permitted in the exercise of the police power of the state. But it must first be established that such property was used as the instrument for the violation of a valid existing law. (Mugler *vs*. Kansas, 123 U. S., 623; Slaughter-House Cases, 16 Wall. [U. S.], 36; Butchers' Union, etc., Co. *vs*. Crescent City, etc., Co., 111 U. S., 746; John

Stuart Mill — "On Liberty," 28, 29.)

Without further attempting to define what are the peculiar subjects or limits of the police power, it may safely be affirmed, that every law for the restraint and punishment of crimes, for the preservation of the public peace, health, and morals, must come within this category. But the state, when providing by legislation for the protection of the public health, the public morals, or the public safety, is subject to and is controlled by the paramount authority of the constitution of the state, and will not be permitted to violate rights secured or guaranteed by that instrument or interfere with the execution of the powers and rights guaranteed to the people under their law — the constitution. (Mugler *vs*. Kansas, 123 U. S., 623.)

The police power of the state is a growing and expanding power. As civilization develops and public conscience becomes awakened, the police power may be extended, as has been demonstrated in the growth of public sentiment with reference to the manufacture and sale of intoxicating liquors. But that power cannot grow faster than the fundamental law of the state, nor transcend or violate the express inhibition of the people's law — the constitution. If the people desire to have the police power extended and applied to conditions and things prohibited by the organic law, they must first amend that law.

It will also be noted from an examination of said section 13, that it takes no account of contracts for the employment of women by the day nor by the piece. The law is equally applicable to each case. It will hardly be contended that the person, firm or corporation owning or managing a factory, shop or place of labor, who employs women by the day or by the piece, could be compelled under the law to pay for sixty days during which no services were rendered.

It has been decided in a long line of decisions of the Supreme Court of the United States, that the right to contract about one's affairs is a part of the liberty of the individual, protected by the "due process of law" clause of the constitution (Allgeyer *vs*. Louisiana, 165 U. S., 578, 591; New York Life Ins. Co. *vs*. Dodge, 246 U. S., 357, 373, 374; Coppage *vs*. Kansas, 236 U. S., 1, 10, 14; Adair *vs*. United States, 208 U. S., 161; Lochner *vs*. New York, 198, U. S., 45, 49; Muller *vs*. Oregon, 208 U. S., 412, 421.)

The rule in this jurisdiction is, that the contracting parties may establish any agreements, terms, and conditions they may deem advisable, provided they are not contrary to law, morals or public policy. (Art. 1255, Civil Code.)

For all of the foregoing reasons, we are fully persuaded, under the facts and the law, that the provisions of section 13, of Act No. 3071 of the Philippine Legislature, are unconstitutional and void, in that they violate and are contrary to the provisions of the first paragraph of section 3 of the Act of Congress of the United States of August 29, 1916. (Vol. 12, Public Laws, p. 238.)

Therefore, the sentence of the lower court is hereby revoked, the complaint is hereby dismissed, and the defendant is hereby discharged from the custody of the law, with costs *de oficio*. So ordered.

Street, Malcolm, Avanceña, Villamor, Ostrand, and *Romualdez, JJ.,* concur.