

2. The order for survey issued in this action May 25, 1967, is hereby cancelled.

3. The plaintiff Jekron is awarded one dollar (\$1.00) costs to cover the filing fee.

4. Time for appeal from this judgment is extended to and including December 23, 1968.

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ONGALIBANG UCHEL, Plaintiff

v.

ROBERT P. OWEN, Defendant

Civil Action No. 392

Trial Division of the High Court

Palau District

October 30, 1968

Action to recover for the destruction of a quantity of copra by the Staff Entomologist. The Trial Division of the High Court, Robert Clifton, Temporary Judge, held that the Staff Entomologist could properly order the copra in question destroyed where he considered such to be dangerous to the copra industry in the Trust Territory because of the large infestation by unidentifiable insects some of which were believed to be dangerous to the industry.

1. Agriculture-Insects and Pests--Destruction

The government may provide for the destruction without compensation of property which is infested with pests which are dangerous or suspected to be dangerous to the agricultural industry, where this is reasonably necessary for the protection of the agricultural industry.

2. Public Officers--Powers--Destruction of Property

A public official who destroys property under an unconstitutional statute or who destroys property by willfully acting in excess of his authority under the circumstances, can be held liable as an individual for the destruction of the property illegally destroyed.

3. Public Officers-Powers--Destruction of Property

Under the circumstances presented the public officer involved was justified in ordering the destruction of the property in question under Section 733 of the Code. (T.T.C., Sec. 733)

4. Judgments--Judgments of Acquittal

An acquittal in a criminal prosecution does not constitute evidence of innocence in a subsequent civil action based upon the alleged criminal

act, and is not admissible in favor of the accused in a civil action to prove that he was not guilty of the crime with which he was charged.

5. Agriculture--Quarantines-Generally

Section 734 of the Trust Territory Code gives authority to enforce quarantines and regulations established under Section 731 of the Code. (T.T.C., Sees. 734, 731)

6. Agriculture--Quarantines-Emergency Measures

In the field of quarantine measures and enforcement Section 733 of the Code, which provides for immediate action in emergency quarantine subject to the later approval of the High Commissioner, is not unconstitutional. (T.T.C., Sec. 733)

7. Agriculture--Quarantines-Emergency Measures

It is impracticable, if not impossible, for the lawmaking power to fore-know and specifically enumerate all contagious diseases and pests that may arise affecting the horticultural industry of a state, thus to meet the necessities caused by new diseases as they may occur, and prevent their spread, matters purely administrative may be left to administrative officers. (T.T.C., Sec. 733)

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CLIFTON, *Temporary Judge*

FINDINGS OF FACT

1. It is true that plaintiff was the owner of 176 bags of copra and that said copra was seized and destroyed under the directions of defendant in performance of his duties as Staff Entomologist of the Trust Territory on or about January 17, 1967, but it is untrue that the said seizure or destruction was maliciously, wantonly, unlawfully or recklessly done or that the defendant converted said copra to his own use.

2. That said copra had been acquired by plaintiff from a quantity of copra brought into Koror from Indonesia on a vessel from Indonesia, and said copra was unlawfully unloaded and brought into Koror in violation of Section 736 of the Trust Territory Code.

3. That the defendant as Staff Entomologist discovered that said 176 bags of copra were infested with a very large number of insects many times greater in number

than the insects found on or about copra in the Palau District, and that he was unable to identify a large percentage of said insects but because of the fact that some of the insects resembled insects dangerous to copra producing and selling, and that he was unable to identify a large percentage of said insects, he suspected that said copra was infested with pests dangerous to the copra producing and selling occupation or industry in the Trust Territory.

4. That said situation so discovered by the defendant was not covered by the controls, quarantines or regulations then in effect in the Trust Territory but was a situation warranting immediate action to prevent the infection or infestation of copra within the Trust Territory and that the said action of the defendant as Staff Entomologist in ordering the seizure and destruction of said 176 bags of copra was warranted under the provisions of Section 733 of the Trust Territory Code.

#### OPINION

[1, 2] The government may provide for the destruction without compensation of property which is infested with pests which are dangerous or suspected to be dangerous to the agricultural industry, where this is reasonably necessary for the protection of the agricultural industry. See 70 A.L.R.2d 853 et seq. and Am. Jur. 2d 807-811. However, a public official who destroys property under an unconstitutional statute or who destroys property by willfully acting in excess of his authority under the circumstances, can be held liable as an individual for the destruction of the property illegally destroyed. See 160 A.L.R. 332.

The plaintiff in his complaint alleged that the defendant Robert P. Owen "maliciously, unlawfully and recklessly seized, detained and has converted to his own use property of the plaintiff, list of which is hereto attached and prayed

to be read as part hereof, of the value of \$1500.00." The list attached covered 200 bags of copra. The answer of the defendant, as amended at the pre-trial conference, denied plaintiff's claims and alleged that any destruction of plaintiff's property was in the exercise of defendant's powers and duties as Staff Entomologist of the Trust Territory under Chapter 12 of the Trust Territory Code.

The plaintiff testified that he was the owner of some 200 bags of copra which he had purchased from various people on the Island of Babelthaup in the Palau District and that these were taken from a warehouse and destroyed on the order of the plaintiff.

However, the testimony of a number of witnesses called by the defendant showed that the copra which was seized and destroyed, totalling 176 bags, was unlike any which was produced in Babelthaup or the Trust Territory, that instead of having been cut like Trust Territory copra it was crushed, that the shape of the chunks was unlike Trust Territory copra, and that while Trust Territory copra was made from ripe coconuts, that destroyed was from young coconuts which were on an Indonesian vessel which had been moored alongside of a boat belonging to the plaintiff and the testimony showed that the copra of the plaintiff was unsaleable as Micronesian copra. The evidence amply supported the court's finding that the copra was copra which was obtained by the plaintiff from the copra aboard the Indonesian vessel.

[3] The testimony of the defendant and other witnesses also showed that only 176 bags of copra were seized and destroyed under orders of the defendant as Staff Entomologist and that this copra was infested by thousands of insects most of which were unidentifiable but some of which resembled insects of a kind dangerous to the copra industry. Although some of the latter types of insects were sent by the defendant to the National Museum which later

reported that those sent to the Museum were not of the variety suspected by the defendant. However, the defendant testified that as the Staff Entomologist he considered the copra which was destroyed on his orders to be dangerous to the copra industry in the Trust Territory because of the large infestation by unidentifiable insects some of which he believed to be dangerous to the copra industry, but that he seized and destroyed the said copra only after he had contacted the Deputy High Commissioner who informed him that he should use his emergency powers under Section 733 of the Trust Territory Code. The court must hold that under the circumstances the defendant was justified in ordering the destruction of the copra under said Section 733.

[4] The plaintiff herein chiefly relied upon the fact that prior to the seizure and destruction of the copra in question criminal proceedings had been instituted against the defendant and a number of Indonesians charging a violation of Section 736 of the Trust Territory Code in illegally bringing into the Territory the copra in question. It was shown that in such proceedings testimony of the defendant and others was heard concerning the bringing into the Territory of copra from the Indonesian vessel and testimony concerning its infestation with insects and the court rendered a judgment of "not guilty". Plaintiff asserts that this judgment concludes the issue of whether the copra was brought in from Indonesia and whether it was infested. His contention cannot be sustained. The rule which governs this is set forth in 30A Am. Jur. 2d 513, as follows:-

"474. Judgments of Acquittal.-The great weight of authority supports the rule that a judgment of acquittal is not effective under the doctrine of res judicata in later civil proceedings and does not constitute a bar to a subsequent civil action involving the same subject matters. This has even been held true in regard to a civil action brought against the defendant by the state, al-

though in order to recover, it must prove him to have been guilty of the offense of which he has already been acquitted. In this connection it is held that a prior acquittal is not admissible in evidence to establish the truth of the facts on which it was based. An acquittal in a criminal prosecution does not constitute evidence of innocence in a subsequent civil action based upon the alleged criminal act, and is not admissible in favor of the accused in a civil action to prove that he was not guilty of the crime with which he was charged."

There are a number of reasons for this rule, but the chief reason is that a different degree of proof is required in a criminal case. See 30A Am. Jur. 514. To state the matter simply, a verdict of "not guilty" in the criminal case did not establish that the copra in question was not brought in from Indonesia or that it was not infested, but the decision merely held that the proof did *not* meet the high degree of proof required in a criminal case for a verdict of "guilty"-that is, proof *beyond* a reasonable doubt.

**[5]** Only one other point remains to be considered and that is whether Section 733 of the Trust Territory Code is an unconstitutional delegation of legislative powers to the staff Entomologist.

Section 734 reads as follows:-

"Inspection. All animals and plants or parts thereof, including seeds, fruits, vegetables, cuttings, etc., entering the Trust Territory or transported within the Trust Territory are subject to inspection by Agricultural Quarantine Inspectors and may be refused entry into or movement within the Trust Territory if they are known to be, *or are suspected of being*, infected or infested with disease or pests. In addition, all aircraft and vessels entering the Trust Territory, or moving within the Trust Territory, or their cargoes, including baggage, ship's stores and ballast, are subject to inspection by Agricultural Quarantine Inspectors, for the purpose of enforcing the controls, quarantines and regulations, except that such inspectors of U.S. military aircraft and vessels shall be subject to existent military security

regulations. It shall be unlawful for anyone to interfere with or to refuse to submit to the above mentioned inspections. (As amended by Executive Order No. 58, dated June 5, 1956.)" (Italics supplied by the court.)

This section gives authority to enforce quarantines and regulations established under Section 731 which reads in part as follows:-

"Plant and animal quarantines. The Staff Entomologist, with the prior approval of the High Commissioner, shall issue Plant and Animal Quarantines as a means of implementing the Plant and Animal Quarantine Controls of this Chapter. In addition, Plant and Animal Quarantine Regulations, relating to the administration and enforcement of the Plant and Animal Quarantine Controls and the Plant and Animal Quarantines, will be issued by the Staff Entomologist with the prior approval of the High Commissioner. Letters and memoranda may be issued from time to time by the Staff Entomologist, Director of Agriculture, High Commissioner and Deputy High Commissioner relating to the administration and enforcement of the above-mentioned controls, quarantines and regulations."

However, the Staff Entomologist is given emergency authority under Section 733 which reads:-

"Emergency measures. Upon the discovery of a situation not covered by the controls, quarantines or regulations, or any other situation warranting immediate action, emergency quarantine measures, subject to the later approval of the High Commissioner, may be made at any time by the Staff Entomologist or an Agricultural Quarantine Inspector. A report of such action shall be made as prescribed by the Staff Entomologist. (As amended by Executive Order No. 58, dated June 5, 1956.)"

**[6,7]** While it may be argued that Section 733 constitutes an unconstitutional delegation of legislative powers to an official of the executive branch of the government, it must be held that in the field of quarantine measures and enforcement Section 733 is not unconstitutional. For a discussion of the question of a delegation of the powers

of the legislature see the cases cited at 70 A.L.R.2d at p. 876, wherein it is said, "In most instances, however, attacks on legislation designed to protect vegetation, which were based on claimed unlawful delegation of power have proved unsuccessful." See *Carsten v. De Sellem*, 82 Wash. 643; *Los Angeles Berry Growers' Co-op Assoc. v. Huntley*, 84 Wash. 155; *Williams v. State*, 146 Tex. Crim. 430; *Howard v. State*, 154 Ark. 430; *Los Angeles County v. Spencer*, 126 Cal. 670; *Irvine v. Citrus Pest Dist. No.2*, 62 Cal. App.2d 378; *Balch v. Glenn*, 85 Kan. 735; *Wallace v. Feehan*, 206 Ind. 522; and *State v. Wacker* (Ariz.), 344 P.2d 1004. The reasoning behind the decisions mentioned is well stated in *Carstens v. Sellems*, supra, in which the court in its opinion said:-

"It is impracticable, if not impossible, for the lawmaking power to foreknow and specifically enumerate all contagious diseases and pests that may arise affecting the horticultural industry of the state. To meet the necessities caused by new diseases as they may occur, and prevent their spread, matters purely administrative may be left to administrative officers. If this were not so, the lives and property of the people might frequently be placed in jeopardy by the occurrence of some new contagion which the lawmaking branch of the government had not foreseen."

Such reasoning is particularly applicable to the situation in the Trust Territory where it is well known that one insect, the rhinoceros beetle, has almost destroyed the coconut industry in large sections of the Territory.

#### JUDGMENT

It is hereby ordered, adjudged, and decreed as follows : -

1. That the plaintiff take nothing by reason of this action.
2. That the defendant have judgment against the plaintiff for the costs of action in this proceeding.