

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN DE LOS SANTOS, DEFENDANT AND APPELLANT.

G.R. No. 10841. February 02, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

On or about the 15th of January, 1914, a complaint was presented in the Court of First Instance of the Province of Cebu, alleging that the defendant and appellant herein was a Chinese laborer and was found in the Philippine Islands, without the certificate required under Act No. 702.

Upon said complaint the defendant was duly arrested and brought before the court on the same day. After several adjournments of the trial, the cause was finally submitted to the court on the 25th of January, 1915.

After hearing the respective parties the Honorable Adolph Wislizenus, judge, on the 30th of March, 1915, rendered the following decision and judgment ordering the defendant deported from the Philippine Islands:

"The court, after an examination of the evidence in this case, is of the opinion that the defendant, Juan de los Santos, is a Chinaman, found within the Philippine Islands, without having in his possession and without having acquired the certificate of residence required by law. These facts are fully supported by the evidence in this case, both direct and indirect, and especially by the defendant's own testimony wherein he states that he is now about 28 years of age and that he arrived in these Islands while they were still under Spanish rule, though elsewhere in his testimony he says that he has been in these Islands more than ten years. Therefore, having lived in the city of Manila since his arrival in the Philippine Islands, which was while they were still under Spanish government, until about five years ago, when he left Manila to live in Cebu, the defendant shows an ignorance of the present conditions and of historical events of the city of Manila that is absolutely incompatible with the truth of his statements. It is impossible that he could have lived so many years in the city of Manila without even knowing whether or not a river existed in or near the city of Manila, without knowing whether or not a wall existed in the city of Manila; without knowing whether or not there were street car lines, and without knowing anything whatsoever about the battle of Manila Bay, which must have occurred during his residence in Manila. These facts, together with the fact that he did not speak any Filipino dialects or Spanish when, one year ago, he was arrested by Government officers, together with the defendant's appearance and physical features, all prove to the entire satisfaction of the court that the defendant is a Chinaman, born in China and a subject of the Republic of China.

JUDGMENT.

"Therefore the court orders that the defendant, now at liberty under bond, be arrested and delivered into the custody of Mr. W. F. Roddy, collector of customs of the port of Cebu, or to his successors in office, in order that he be deported immediately and at the first convenient opportunity, to a port of the Republic of China as a Chinaman having no right to reside in these Islands. The said customs official shall make return to this court of the defendant's arrest and of the compliance with this order of deportation, so that the defendant's bail bond may be cancelled. The costs shall be paid de officio."

On the 31st day of March, 1915, the attorney for the defendant was duly notified of the foregoing decision and judgment.

On the 6th day of April, 1915, the defendant filed a written statement in the Court of First Instance that Juan Singson would thereafter represent him.

On the 5th day of April, 1915, the said Juan Singson gave notice of his intention to appeal to the Supreme Court from the decision and sentence of the Court of First Instance, and prayed that the defendant be admitted to bail. On the same day the judge issued an order admitting the defendant to bail, fixing the amount of the bond therefor at P1,000. On the same day the defendant duly executed a bond for his liberty.

On the 9th day of April, 1915, the defendant and appellant presented a motion for a new trial, basing the same upon the ground that the proof adduced during the trial of the cause did not justify the decision and sentence of the lower court, which motion for a new trial was denied by the lower court on the 17th day of April, 1915.

On the 19th day of April, 1915, the defendant and appellant presented a motion asking that the complaint against him be dismissed, upon the ground that the same had not been signed and sworn to by a person thereunto lawfully authorized.

On the 21st day of April, 1915, said motion to dismiss was denied by the lower court, upon the ground that an appeal had been allowed in said cause.

In this court the appellant alleges that the lower court committed an error in admitting the complaint, which had not been signed or presented by a person authorized so to do under the law. In answer to the argument in support of said assignment of error, the Attorney-General admits that this court had decided, in the case of *United States vs. Lee Chiao* (23 Phil. Rep., 543), that the complaint in case of the deportation of Chinese aliens under Act No. 702 must be signed by some person lawfully authorized so to do but attempts to distinguish the present case from that case. In the case of *Lee Chiao* the defendant presented his objection to the sufficiency of the complaint at the very earliest moment—at his first opportunity so to do. In the present case the defendant, even though he was before the court several times after his arrest, and before the trial, made no objection whatever to the sufficiency of the complaint until more than a year and three months after the same had been presented and after he had been arrested. Neither did he present any objection to the sufficiency of the complaint until nearly three months after he had been sentenced by the lower court to be deported, and even then not until several days had elapsed after he had appealed to this court from the decision of the lower court.

While it is true that the law requires the complaint in a case like the present to be signed by particular persons or class of persons defined by the law, yet, in the absence of a proper objection, made in the proper time, we are not inclined to allow the objection in the present case. The action is not a criminal action. The procedure under Act No. 702 is a summary proceeding. The purpose is simply to ascertain whether or not the party involved has a right to remain within territory of the United States. The proceeding is in no proper sense a trial and sentence for a crime or an offense. It is simply an ascertainment, by appropriate and lawful means, of the fact whether the condition exists upon which Congress has decided that an alien of a certain class may remain within the territory of the United States. The order of the deportation is not a punishment, in the sense in which that word is often applied to the expulsion of a citizen from his country, by way of punishment. It is but a method of enforcing the return to his own country of an alien who has not complied with the condition upon the enforcement of which the government of the nation, acting within its constitutional authority and through the proper department, has determined that his continuing to reside therein shall depend. He has not, therefore, been deprived of life, liberty, or property, without due process of law. In the present case the defendant, after his arrest, submitted the question of his right to remain in the Philippine Islands to the court, without any reference to the complaint and without

any objection to the procedure followed by the lower court. In the absence of an objection to the complaint, the court was justified in deciding the case upon the proof adduced during the trial of the cause. The objection presented now smacks too much of a technicality, made for the purpose of delay simply, to justify serious consideration on the part of the court.

We have held in numerous cases that if an objection is not made in the court, in a really criminal action, we will not consider the same when made here for the first time. In the present case we must consider that it was made here for the first time, for the reason that, at the time it was made in the court below, that court had lost its jurisdiction. (U. S. vs. Sarabia, 4 Phil. Rep., 566; Mortiga vs. Serra and Obleno, 5 Phil. Rep., 34; Serra vs. Mortiga, 11 Phil. Rep., 762; 204 U. S., 470; U. S. vs. Paraiso, 5 Phil. Rep., 149; Paraiso vs. U. S., 11 Phil. Rep., 799; 207 U. S., 368; U. S. vs. Aldos, 6 Phil. Rep., 381; U. S. vs. Eusebio, 8 Phil. Rep., 574; U. S. vs. Baltazar, 8 Phil. Rep., 592; U. S. vs. Flores, 9 Phil. Rep., 47; U. S. vs. Kosel, 10 Phil. Rep., 409; U. S. vs. Lampano and Zapanta, 13 Phil. Rep., 409; U. S. vs. Palacio, 16 Phil. Rep., 660; U. S. vs. Planas, 21 Phil. Rep., 90; U. S. vs. Gow Chiong, 23 Phil. Rep., 138; U. S. vs. Cardell, 23 Phil. Rep., 207.)

The appellant argues that the court acquired no jurisdiction of the cause, by reason of the fact that the complaint had not been presented by the proper parties, and cites Act No. 1773 in support of his contention. Act No. 1773 makes certain private crimes public crimes. It further provides that no prosecution etc. shall be instituted, except upon the complaint of certain persons mentioned in the law. The provisions of Act No. 1773 are in harmony with certain provisions of the Penal Code. For instance, article 448 of the Penal Code provides that; "The offense of seduction shall not be prosecuted, except upon complaint filed in the name of the offended party, her parents, grandparents, or guardian." We have repeatedly held that under the provisions of the Penal Code, as well as under Act No. 1773, the persons designated by law must present the complaint. (U. S. vs. De la Santa, 9 Phil. Rep., 22; U. S. vs. Narvas, 14 Phil. Rep., 410; U. S. vs. Castanares, 18 Phil. Rep., 210; U. S. vs. Jayme, 24 Phil. Rep., 90.)

There is a wide distinction between the provisions of Act No. 702 relating to persons who may present a complaint for the arrest of a Chinese alien, and the provisions of Act No. 1773 and the provisions of the Penal Code above stated. Said Act and said provisions of the Penal Code prohibit the commencement of an action unless the complaint is presented by certain persons. Act No. 702, while it provides who may make the arrest upon a warrant issued by the Court of First Instance, contains no provision whatever relating to the person who may make a sworn complaint upon which the warrant of arrest may be issued. The Act of Congress however of March 3, 1901, section 3, does contain a provision with reference to the person who must present the complaint. We held in the case of Lee Chiao supra that a complaint presented by any other person or persons than those mentioned in the Act of Congress was bad, upon a proper objection. The objection to the complaint in that case was made at the very earliest opportunity. We do not believe that in cases like the present one the court does not acquire jurisdiction to hear and determine a cause, where there has been no objection and where the objection is presented for the first time in this Court.

For all of the foregoing reasons, and for the further reason that the evidence clearly shows that the defendant is a Chinese laborer found in the Philippine Islands without the required certificate, the judgment of the court below should be and is hereby affirmed, with costs. So ordered.

Arellano, C. J., Torres and Araullo, JJ., concur.

Carson, J., see dissenting opinion.

DISSENTING OPINION

CARSON, J.:

I dissent.

The majority opinion substantially concedes that the complaint was fatally defective, had formal objection been made by the defendant Chinaman in the court below. It is the very irony of legal technicality of procedure to make the validity of a judgment of deportation depend upon the presentation "at the first available opportunity" of such a formal objection by a Chinese defendant in cases of this kind.

Although the defendant in these cases is arrested on warrant and held in detention pending the proceedings, and although a judgment against the defendant involves his deportation from the Islands, this Court, following the doctrine laid down by the Supreme Court of the United States, has held that the proceedings, which closely assimilated in form those had in criminal prosecutions, are in their essence civil proceedings. Hence the court has also held that the defendant is not entitled to the privileges guaranteed to an accused person charged with the commission of crime. Thus he is not entitled to the presumption of innocence in his favor, to be informed that he has a right to have counsel assigned him, to decline to testify against himself, or to any of the other safeguards guaranteed to defendants in criminal actions but denied to defendants in civil actions. But all this would seem to impose the duty on the courts to require the most rigid compliance with the express provisions of law by virtue of which alone the defendant may be arrested, held and deported—and this especially when it is considered that these provisions are few and simple and the proceedings summary in the highest degree. The requirement of rigid compliance with the statutory provisions whereby the courts acquire jurisdiction in these cases and under which the proceedings are conducted is emphasized by the fact that experience has shown us that the defendants in these cases are usually ignorant foreigners, unable to speak or understand the language of the courts, and because of their detention pending the proceedings peculiarly helpless in any attempt they may make to establish a defense.

The rule relied upon in the majority opinion is a mere rule of practice, which I believe would be more honored by its breach than its observance in this class of cases, and which I would not hesitate to brush aside even if there were no precedents in our reports to justify us in doing so.

But under strikingly analogous circumstances, in the class of numerous cases formerly known as "private crimes" we have laid down a rule which I conceive to be in direct conflict with that announced in the case at bar with relation to "deportation" cases.

In all those cases, wherein the law expressly prescribes the persons who must sign the complaint upon which the proceedings are instituted, we have held that the court does not acquire jurisdiction over the subject matter where the person designated by law fails to sign the complaint and thus institute the proceedings; and further we have held that not only may an objection be raised on this ground for the first time on appeal but this court may and will raise the jurisdictional question *ex mero motu* when the defect is disclosed by an examination of the record. (18 Phil. Rep., 210, 213;[1] 19 Phil. Rep., 174, 175;[2] 20 Phil. Rep., 363, 367;[3] 21 Phil. Rep., 404;[4] 24 Phil. Rep., 90, 91;[5] 25 Phil. Rep., 171, 174.[6])

I am at a loss in an attempt to understand how the case at bar is distinguished in principle from the cases cited, and sets out here without further comment the reasoning adopted by the court in one of those cases, *United States vs. Castanares* (18 Phil. Rep., 210):

"The objection in this case, however, goes directly to the jurisdiction of the court. Jurisdiction over the crime of *injuria* is expressly denied to the court in these Islands by the above-cited provisions of section 1 of Act No. 1773, unless such jurisdiction is conferred by the filing of a complaint by the aggrieved party, his parents,

grandparents, or guardian. In the case of the United States vs. Narvas (14 Phil. Rep., 410), we held that the complaint referred to in this section is a sworn statement as defined in section 4 of General Orders, No. 58. The information upon which these proceedings were instituted was not such a complaint, and there can be no doubt, therefore, that the court below was without jurisdiction to proceed upon that information. An objection based on the lack of jurisdiction may be raised at any stage of the proceedings either in the court below or on appeal, and, indeed, courts do not hesitate to dismiss proceedings ex mero motu whenever it clearly appears that the subject matter is not within their jurisdiction, as in the case at bar. Jurisdiction over the subject matter in a criminal case can not be conferred upon the court by the accused, by express waiver or otherwise, since such jurisdiction is conferred by the sovereign authority which organized the court, and is given only by law in the manner and form prescribed by law. (Harkness vs. Hyde, 98 U. S., 476; Nazos vs. Crazen, 3 Dill. [U. S.]t 474; Wakefield vs. Goudy, 4 111., 133; Chipman vs. Waterbury, 59 Conn., 496.)

"Sound reasons of public policy can be and are advanced in support of those provisions of section 1 of Act No. 1773 which forbid the institution of criminal proceedings against persons-charged with the crimes of adulterio, estupro, and injuria except upon the complaint of the aggrieved person or of the parents, grandparents, or guardian of such person.

"These reasons taken together with the express provisions of the law convince us that we should in all cases insist upon the institution of such proceedings in strict conformity with the express terms of the law, that is to say, by the filing of a complaint or sworn written statement by the injured party, his parents, grandparents, or guardian."

[1] U. S. vs. Castañares.

[2] U. S. vs. Ortiz and Regalado.

[3]U. S. vs. Cruz and Reyes.

[4]U. S. vs. De los Santos.

[5] U. S. vs. Jayme.

[6]U. S. vs. Gariboso.

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