

## THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LOO HOE, DEFENDANT AND APPELLANT.

*G.R. No. 12473. September 18, 1917*

Ponente: JOHNSON, J.

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### JOHNSON, J.:

The only question presented by this appeal is whether or not the appellant is guilty of contempt under section 232 of Act No. 190 for violating a sentence of deportation imposed for a violation of the Opium Law.

The facts are simple and may be stated as follows:

In the month of April, 1916, the appellant was found guilty of a violation of the Opium Law by the Court of First Instance of the Province of Sulu, Department of Mindanao and Sulu, and was sentenced to be deported. The sentence was executed. In the month of August, 1916, he returned to the Philippine Islands, in violation of the terms of said sentence.

On the 19th day of August, 1916, the complaint in the present case was presented in the court of the justice of the peace. A preliminary examination was held by said justice of the peace, and the appellant was held for trial in the Court of First Instance. On the 16th day of November, 1916, a complaint was presented in the Court of First Instance of said Province of Sulu by the deputy prosecuting attorney of said Province. The appellant was brought to trial, and upon arraignment plead guilty and was sentenced to be imprisoned for a period of four months, and at the termination of said sentence of imprisonment, to be again deported and to pay the costs. From that sentence he appealed.

He now contends that his violation of the sentence of deportation does not constitute contempt under section 232 of Act No. 190.

Said section (232), among other things, provides that:

"A person guilty of any of the following acts may be punished as for contempt:

"1. Disobedience of, or resistance to, a lawful writ, process, order, judgment or command of a court, or injunction granted by a court or judge;

"\* \* \* \* \*

If the defendant is guilty at all of contempt it is because of a violation of that part of said section which punishes for a violation of the "judgment or command of a court."

Said section is copied almost exactly from article 5640 of the statutes "upon the question of contempt of the State of Ohio. Similar statutes exist in many other jurisdictions.

In the sentence of deportation imposed upon the appellant there is found the additional phrase "y permanecer para siempre fuera de estas Islas Filipinas." There is nothing in the law which made it necessary to add said phrase. It

added nothing to the order of deportation (U. S. vs. Su Chian, R. G. No. 10865, decided Dec. 21, 1916),<sup>[1]</sup> and gave the court no more power or authority to punish the defendant for contempt, than if said phrase had not been added.

Courts have power to punish as contempt any interference with the proceedings or resistance to their authority. Generally speaking, statutory authority is not necessary. It is a power inherent in courts of superior jurisdiction and very essential to their existence. (U. S. vs. Hudson and Goodwin, 7 Cranch [U. S.], 32; Fishback vs. The State, 131 Ind., 304.)

The power to punish for contempt is not simply an incident of the exercise of judicial functions, but is the highest exercise of judicial power. (In re Mason, 43 Fed. Rep, 510.)

In returning to the Philippine Islands after the order of deportation, did the defendant disobey or resist a "judgment or command of a court," in the sense in which that phrase is used in section 232? Suppose, instead of the order of deportation, the appellant had been sentenced to a period of imprisonment, and suppose he had violated the judgment or sentence of imprisonment by breaking jail, would it be seriously considered that he could be punished for contempt by virtue of said quoted provision from said section 232? In practically all jurisdictions, and even at common law, jail breaking was considered a crime. (State vs. Brown, 82 N. C, 585; Commonwealth vs. Farrell, 5 Allen [Mass.], 130.)

In practically all of the States of the Union, not only do the statutes provide for the punishment of a man who breaks jail, but they also provide punishment against the jailer who, by reason of negligence, permits the escape of prisoners. Similar statutes exist in this jurisdiction. (Arts. 127, 128, 261, 358, 359 of the Penal Code and Act No. 2364.)

If, therefore, the "judgment or command of a court," as used in section 232, relates to final judgments or sentences, which finally dispose of the cause in the courts, where the defendant has been turned over to another department of the Government for the purpose of executing said "judgment," then it would seem to be unnecessary, especially in this jurisdiction, to rely, in any case, upon the provisions of the Penal Code above quoted.

Does the disobedience of, or resistance to, a "judgment or command of a court," as that phrase is used in said section 232, apply to a final judgment which finally disposes of the case, or does it apply to some judgment or command of a court made and issued during the pendency of the action in the court? We have examined many decisions in many of the States, where similar statutes exist to that of section 232, for the purpose of ascertaining whether or not such statutes had been applied to what we generally term final judgments of the court, or whether they are applied simply to judgments and orders made during the pendency of the action. In no single case, which we, have found, have the courts attempted, under the provisions of statutes similar to section 232, to punish for contempt, except in purely equitable actions, for a violation of a final sentence of a court. And we are using the word "final" here to mean a judgment which finally disposes of the case and excludes any further order or action by the court, and in contradistinction to a judgment or order made and issued during the pendency of the action which may be final for its particular purpose. For example, an order or judgment granting a preliminary injunction is final in the sense that it may be enforced until revoked; and any person violating it may be punished for contempt. So also an order granting an alimony in a divorce proceeding is final in the sense that it must be obeyed, and those violating the order may be punished for contempt. So also in an action for a permanent injunction and damages, if the final injunction is finally granted, the court may punish, even if the action is closed, any person who violates its terms. These are purely equitable actions; and the judgments and orders issued lie peculiarly within the general injunctive powers of the court, and, of course, those violating them may be punished

for contempt. But we believe that there are no cases, at least we have been unable to find any, in which the courts have punished as for contempt the violation of any final sentence in a criminal cause, or what are considered law cases in contradistinction to equitable cases. Is it not a strange fact that the jurisdiction of the courts under similar statutes has not been invoked to punish for contempt, the violation of criminal sentences, especially in view of the well known fact that jail breaking is a common crime?

If the defendant who has been sentenced to imprisonment breaks jail, the executive department of the Government may do two things: (a) It may, in proper cases, proceed against him under article 127 and other provisions of the Penal Code; and (b) it may simply arrest him and return him to jail. Whether the executive department of the Government will pursue one or the other of these statutory remedies lies within the discretion of that department of the Government. In our opinion the violation of the judgment of deportation by the appellant is not punishable as contempt under section 232. The judgment of deportation was final. The sentence had been duly executed. The court had lost all jurisdiction over the defendant in that case. The judgment was executed by the executive department of the Government; and if the defendant has escaped the penalty imposed by the court, the executive department of the Government has its remedy by enforcing the terms of the sentence again.

While we are of the opinion that the defendant is not punishable under section 232, we are also of the opinion that none of the provisions of article 127 of the Penal Code is applicable to the present case. The penalties for jail breaking under said article (127) cannot be applied to the acts of the defendant.

Therefore, the sentence of the lower court is hereby revoked with costs de officio; and it is hereby ordered and decreed that the defendant be delivered to the proper authorities of the executive department of the Government for the execution of the sentence of deportation heretofore rendered against him. So ordered.

Arellano, C. J., Carson, Araullo, Street, and Malcolm, JJ., concur.

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[1]Note.—R. G. No. 12513 involving analogous facts was decided at the same time.

[1] Not published.

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