THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CHAN FOOK, DEFENDANT AND APPELLANT.

G. R. No. 16968. October 06, 1921

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The appellant Chan Fook was prosecuted for the crime of resistance and disobedience to the public authority, and sentenced by the Court of First Instance of Manila to two months and one day of arresto mayor and to pay a fine of 1,301 pesetas and the costs of the action, with subsidiary imprisonment in case of insolvency.

From the record it appears that the accused, a Chinese subject, was a passenger of the United States Military Transport South Bend, which arrived in Manila on April 6, 1920. Having been allowed by the immigration authorities to land, he left the boat on the same day, April 6. At about 3 or 4 o'clock in the afternoon of the following day, he went to pier No. 1 to get his baggage. After the search of the baggage in which postcards of an indecent character were found, a customs agent, Eugenio M. Cruz, attempted to search the body of the accused, to which the latter apparently objected. A dispute took place between the two, which terminated in the secret agent seizing the Chinaman by the arm with intent to search his body, after showing him his police badge. The accused resisted and struck the secret agent on the stomach. The latter in turn struck him on the neck. Here the customs inspector, Anastacio Jacinto, intervened, and explained to the accused that Cruz was a customs secret service agent and had the right to search him in order to find whether he had on his person any contraband. Then the appellant made no further resistance and allowed himself to be searched. Under such circumstances, has the accused committed the crime of resistance and disobedience to the public authority as alleged in the information? To decide this question, it is first necessary to determine whether the agent, Cruz, was authorized to search the person of the accused.

The prosecution alleges that under section 1338 of the Administrative Code all persons coming into the Philippine Islands from Foreign countries shall be liable to detention and search by the customs authorities under such regulations as may be prescribed relative thereto. The defense, however, contends that once the accused has arrived at the point of his destination by being allowed to leave the boat and to land he was beyond the jurisdiction of the customs authorities, and, therefore, not liable to search without judicial warrant. Section 1338 of the Administrative Code provides:

> "SEC. 1338. Search of persons arriving from foreign countries.—All persons coming into the Philippine Islands from foreign countries shall be liable to detention and search by the customs authorities under such regulations as may be prescribed relative thereto.
>
> "Female inspectors may be employed for the examination and search of persons of their own sex."

Having in mind the aim of the law in authorizing the search of persons coming from foreign countries, which is to avoid the clandestine introduction into the Philippine Islands of goods subject to the payment of customs duties, or the importation of articles prohibited by law, or the entrance of persons who have no right to reside in these

Islands, we are of the opinion that after the customs authorities have permitted the accused to land in Manila, the terminus of his voyage, he ceased to be a passenger within the meaning of said section 1338 of the Administrative Code.

The fact that the accused returned to pier No. 1 to get the baggage that he had left there the day before does not subject him to the operation of said section. He could have gone back there several weeks or months after his arrival, and in such case, if the contention of the prosecution is sustained, all foreigners arriving in the Philippines would be in the highly anomalous situation of being liable to detention and search for an indefinite time, which is a violation of the right to be secured against ureasonable searches guaranteed by section 3 of the Act of Congress of August 29, 1916, known as Jones Law, which provides:

> "That the right to be secured against unreasonable searches and seizures shall not be violated,"
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> "" It is urged that the object of searching the person of the accused was to find whether he had with him any contraband. It was too late to look for any contraband. He had already been searched when he left the boat. The accused had reached his destination, spending the night in the house where he had taken lodging. It is not, therefore, reasonable to believe that when he returned to pier No. 1 the next day, he had about his body any contraband. Thus the search made by the agent Cruz appears to be unreasonable.

Commenting on the meaning and scope of resistance and disobedience, as elements of the crimes against public authority and its agents, Groizard, among other things, says:

> "A person in authority, his agent or a public officer who exceeds his power can not be said to be in the exercise of the functions of his office. The law that defines and establishes his powers does not protect him for anything that has not been provided for.
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> "The scope of the respective powers of public officers and their agents is fixed. If they go beyond it and they violate any recognized rights of the citizens, then the latter may resist the invasion, specially when it is clear and manifest. The resistance must be coextensive with the excess, and should not be greater than what is necessary to repel the aggression.
>
> "The invasion of the prerrogatives or rights of another and the excess in the functions of an office, are the sources that make for legitimate resistance, especially, in so far as it is necessary for the defense of the persons or their rights in the manner provided for in article 8 of the Penal Code." (3 Groizard, pp. 456, et seq.)

In the case at bar the action of the accused in laying his hands on the agent Cruz is, in our opinion, an adequate defense to repel the aggression of the latter, who had seized him by the arm for the purpose of searching him. In accordance with the repeated decisions of the supreme court of Spain, the gravity of a disobedience to an order of a person in public authority is measured and graded by the circumstances surrounding the act, the motives prompting it, and the real importance of the transgression, rather than by the source of the order disobeyed. And, taking into consideration the circumstances of the present case, wherein the agent Cruz had exceeded his functions, and wherein the accused acted in defense of the most highly esteemed of individual rights—the constitutional right to be secured against unreasonable searches—we are of the opinion that there is no ground for finding the accused guilty of the crime defined in article 252 of the Penal Code.

The supreme court of Spain, in a decision rendered December 26, 1876, held that the act of obstinately disregarding an order of an agent of the authority does not constitute the crime of grave resistance and disobedience to an agent of the public authority where it appears that upon being directed for the third time, the accused obeyed, though uttering unpleasant words, for although the accused did not leave the premises on the first and second requests, he, however, obeyed on the third, and did not render it necessary for the public officer to make use of the means authorized by law to make himself respected. That the accused had no intention to resist

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and disobey the agents of the authority, in the legal sense of the word, is shown by the fact that by the mere explanation of the customs inspector, Anastasio Jacinto, he finally allowed himself to be searched. Jacinto's words were sufficient to make the Chinaman submit himself peacefully to the requirement of the agent Cruz.

That foreigners in the Philippines are entitled to the benefits of the individual rights sedured by the Philippine Bill is undeniable. In the case of Kepner vs. U. S. (195 U. S., 100), the Supreme Court said:

> "When Congress came to pass the-Act of July 1, 1902, it enacted, almost in the language of the President's instructions, the Bill of Rights of our Constitution. In view of the expressed declarations of the President, followed by the action of Congress, both adopting, with little alteration, the provisions of the Bill of Rights, there would seem to be no room for argument that in this form it was intended to carry to the Philippine Islands those principles of our government which the President declared to be established as rules of law for the maintenance of individual freedom, at the same time expressing regret that the inhabitants of the Islands had not therefore enjoyed their benefit."

And according to the principles underlying the Constitution, as extended to the Philippine Islands by the President's instructions to the Commission and by the Philippine Bill, foreigners are entitled to the protection of their life, liberty, and property. In the case of Yick Wo vs. Hopkins (118 U. S., 356, 369), Justice Matthews says:

> "The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: 'Nor shall any State deprive any person of life, liberty, or property without due process-of law; nor deny to any person within its jurisdiction the equal protection of the laws.' These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws."

In view of the foregoing, the judgment appealed from is reversed, and the accused must be, and is hereby, acquitted with the costs de oficio. So ordered.

Johnson, Araullo, Street, and Avancena, JJ., concur.

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