

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JULIAN DONES, DEFENDANT AND APPELLANT.*G.R. No. 3375. March 25, 1907*

Ponente: MAPA, J.

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These proceedings have been brought for the purpose of carrying into effect the execution of a sentence of death rendered by a military commission. In May, 1901, the defendant, Julian Dones, was tried for the crime of murder before a military commission created in Sorsogon, Province of Sorsogon, found guilty of said crime, and sentenced to be hanged by the neck until dead. This sentence was approved on July 19, 1901, by the commanding general of the Philippine Division, and the 23d day of August of the same year was fixed for the execution of said sentence. In the intervening time the convicted man succeeded in making his escape from prison, remaining a fugitive until his recapture in July, 1902. At this time the Civil Government had already been established in place of the military government in control during the war, and consequently the military commission which had sentenced Dones had passed out of existence.

In December, 1905, the Attorney-General, by order of the Secretary of Finance and Justice, making a statement in detail of the case and proceedings herein referred to, formally asked the Court of First Instance of the Province of Sorsogon to cite the convicted man to appear in court for the purpose of showing cause or causes, if there were any, why the sentence of the military commission, above mentioned, should not be carried out, and that said court, in the absence of such showing, make the necessary order carrying into effect said sentence in conformity with Act No. 865,[1] as amended by Act No. 1153.[2]

After hearing both sides the court below made an order herein directing the execution of said sentence, from which order Dones appealed to this court.

The Attorney-General, discussing in his brief the essential allegations of the appellant, indicates as errors the following points therein:

- That the proofs supporting the petition of the Attorney-General in the Court of First Instance of Sorsogon are not sufficient to justify the decision of the court ordering the carrying out and execution of the sentence of death rendered against said appellant.
- That Act No. 865 of the Philippine Commission, authorizing the execution of sentences rendered by military commissions in such cases is not constitutional.

In reference to the first point, the proofs presented by the Attorney-General consist of an affidavit of the Executive Secretary, A. W. Fergusson, wherein appear the facts set out and referred to in the first part of this decision, and also that the appellant had not been pardoned, nor had he, the appellant, been granted amnesty for the crime of which he had been convicted, and a translation of the proceedings had before the military commission that sentenced said appellant. This translation is not duly certified to, notwithstanding that the plea

filed by the Attorney-General in the court of Sorsogon states to the contrary, which fact gives the appellant the opportunity of denying the efficacy of said translation as proof, as well as denying the efficacy of the affidavit of the Executive Secretary for the purpose of proving the facts set forth in the same.

Whatever may be the probative value of the said documents in accordance with law, it is certain that the appellant admitted as true the facts alleged by the Attorney-General in the Court of First Instance. This is also stated in a finding of the judge in the order appealed from. "The accused having been notified," it says, "of the petition of the Attorney-General, made his declaration admitting the facts but alleged that this court had no jurisdiction to carry into effect the sentence of the military commission, as rendered against him." Apart from this, in the pleading presented by the appellant through his attorney in the Court of First Instance, opposing the sentence of the military commission sentencing (words from the text) said Dones to-day and on no other date to be executed by order of this court, not the least objection is made to the truth of said facts; neither is there even the insinuation of any denial of such facts, and, lastly, there is no question of fact raised therein, the appellant limiting himself to impugning the constitutionality of Acts Nos. 865 and 1153 of the Philippine Commission and the jurisdiction of the court in the matter. The phrases that are italicized in the pleading and its general tenor necessarily imply an admission of the facts in question, and, as alleged with reason by the Attorney-General in his brief, the admission by the accused of the facts as alleged in the petition of the Attorney-General saves to him, the Attorney-General, the work of presenting proofs which would have for their object the establishing of said facts, and estops the appellant from now, for the first time, denying such facts.

In regard to the second error assigned by the appellant concerning the constitutionality of Act No. 865, this is a question that has already been decided by this court, in the decision rendered in the case of Narciso Cabantag vs. George N. Wolfe^[1] (4 Off. Gaz., 462). This court decided therein that the said act is constitutional. We adhere to said decision, therefore, and declare the claim of appellant herein unfounded.

The order appealed from fixing April 30 of the present year as the date for the carrying out of the sentence of the military commission, above mentioned, is affirmed with the costs of this instance against the appellant. After the expiration of ten days from the notification of this decision let judgment be entered in accordance herewith and ten days thereafter let the case be remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Torres, Johnson, and Tracey, JJ., concur.

[1] III Pub. Laws, 9.

[2] III Pub. Laws, 359.

[1] 6 Phil. Rep., 273.

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