

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LING SU FAN, DEFENDANT AND APPELLANT.

G.R. No. 3962. February 10, 1908

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was accused of the offense of "exporting from the Philippine Islands Philippine silver coins' in a complaint filed in the Court of First Instance of the city of Manila. The complaint was in the words following: "The undersigned accuses Ling Su Fan of the criminal offense of attempting to export Philippine silver coins from the Philippine Islands, contrary to law, committed as follows:

"That on or about the 12th day of December, 1906, in the city of Manila, Philippine Islands, the said Ling Su Fan was freight clerk, supercargo, comprador, and person in charge of all shipments of freight on board the steamship Taming, which said steamship Taming was then and there about to depart from the port of Manila, Philippine Islands, to the port of Hongkong; that the said Ling Su Fan did then and there willfully, unlawfully, and feloniously place, conceal, and hide the sum of twenty thousand six hundred (20,600) pesos in Philippine silver coins, coined by authority of the act of Congress approved March 2, 1903, in his stateroom on board the said steamship Taming with the intent of exporting the said Philippine silver coins from the Philippine Islands to the port of Hongkong, and did then and there attempt to export the said Philippine silver coins from the Philippine Islands to the said port of Hongkong.

"Contrary to the provisions of Act No. 1411 of the Philippine Commission.

"W. H. POLLEY.

"Subscribed and sworn to before me and in my presence, in the city of Manila, P. I., this 20th day of December, 1906, by W. H. Polley.

"A. S. CROSSFIELD,

"Judge, Court of First Instance, Manila, P. I"

To this complaint the defendant i>resented the following demurrer :

"Now comes Ling Su Fan, the accused in the above-entitled cause, through his undersigned counsel, and demurs to the complaint filed against him herein and for causes of demurrer respectfully shows:

"1. That said complaint does not conform substantially to the prescribed form.

"2. That the facts charged do not constitute a public offense.

"3. That the said complaint is contrary to the provisions of the fourteenth amendment of the Constitution of the United States of America and also contrary to paragraph 1 of section 5 of the act of Congress of the United States of America dated July 1, 1902.

"Wherefore the defendant herein prays the court that the said complaint be dismissed and that he, said

defendant, be discharged from custody and arrest.

"Manila, P. I., December 28, 1906.

"LIONEL D. HARGIS,

"C. W. O'BRIEN,

"Attorneys for defendant, 18 Plaza Cervantes, Manila"

Upon this demurrer the court below made the following order:

"This case is before the court for hearing the demurrer to the complaint presented by the defendant.

"After examining the demurrer and the complaint, and giving the same due consideration, I am of the opinion that the grounds of demurrer are not well taken.

"It is therefore ordered that the demurrer be, and it is overruled."

No exception was made at the time of the overruling of the demurrer.

The defendant was duly arraigned and pleaded "not guilty." The case then proceeded to trial.

After hearing the evidence adduced during the trial of the cause, the court below made the following findings of fact:

"That on the 12th day of December, 1906, an employee at the Manila custom-house found on board the steamship Taming in the bunk occupied by and in the exclusive use and control of the defendant, who was the comprador on board (said ship), 20,600 silver coins, each of 1 peso, being coins made and issued by and under the direction of the Government of the Philippine Islands; that when the said coins were discovered as aforesaid and the defendant was confronted with the fact, he stated at first that he knew nothing about it, and afterwards that they had been brought on board by different Filipinos whom he did not know and had been stored in the place in which they were found for transportation to Hongkong; that these statements were made by the defendant voluntarily; that the steamship Taming, on which these coins were found, had already been cleared from the port of Manila for Hongkong and that she was about ready to sail, and that the coins were not manifested either in the incoming or outgoing voyage of the said vessel; that the finding of the coins on board the said steamship Taming, as before stated, was admitted by the defendant at the trial; that the bullion value of the said coins at the time they were alleged to have left Hongkong was at least 9 per cent more than their apparent face value in the Philippine Islands."

The lower court made the following observations concerning the proof offered by the defendant and his witnesses during the trial:

"Evidence was offered on the part of the defense to the effect that the said money was owned by a Chinaman in Hongkong, who shipped the same to the Philippine Islands by the defendant, for the purpose of purchasing Mexican silver coins and Spanish-Filipino silver coins, in accordance with an agreement made by the defendant with another person in Manila, under which for 82 Philippine pesos he was to receive 100 Spanish-Filipino pesos, and for 97 Philippine pesos he was to receive 1.00 pesos, Mexican currency, and in corroboration of the shipment there was presented an insurance policy upon these coins, issued by an insurance company at Hongkong. The defendant testified that upon bringing the coins to Manila he ascertained that he could not purchase 1 Mexican coins and Spanish-Filipino coins as advantageously as he had before agreed, and in accordance with his understanding with the owner of the Philippine silver coins, and so decided to take the Philippine coins back to Hongkong to the owner thereof."

The lower court also made the following observations relating to the credibility of the defendant and his witnesses :

"From the appearance of the witnesses while testifying, who testified that said coins were brought to the Philippine Islands for the purpose of buying other coins, and from the unreasonableness of the proposition advanced by them, I am unable to give their testimony credence. I am unable to believe that any person would send this amount of money to the Philippine Islands from Hongkong in the care of the defendant, who was an employee, as before stated, on board the steamer Taming, without the knowledge of the owners of the vessel or its shipping agent at Hongkong, and without the knowledge of the master of the vessel."

Upon these foregoing findings of fact and observations the lower court found the defendant, Ling Su Fan, guilty of the offense charged in the complaint, and sentenced him to be imprisoned for a period of sixty days and to pay a fine of P200.

From that sentence the defendant appealed to this court and made the following assignment of errors:

"First. That the court below erred in overruling the demurrer presented, to the complaint by the defendant and appellant; and

"Second. That the sentence of the court below was contrary to law and to the great weight of evidence."

The appellant bases his first above assignment of error upon the third ground of tin; demurrer presented by him. in the court below and which the lower court overruled. The third ground of the demurrer is as follows:

"That said complaint is contrary to the provisions of the fourteenth amendment of the Constitution of the United States of America and also contrary to paragraph 1 of section 5 of the Act of Congress of the United States of America dated July 1, 1902."

That part of the contention of the appellant which refers to the Constitution of the United States can have no important bearing upon the present case, for the reason that paragraph 1 of section 5 of the said act of Congress dated July 1, 1902, is almost exactly in the same phraseology as a portion of the fourteenth amendment to the Constitution of the United States, and therefore decisions of the Supreme Court of the United States, in construing said fourteenth amendment, may be referred to for the purpose of ascertaining what was intended by Congress in enacting said paragraph 1 of section 5, and what laws the Philippine Commission may make under its provisions.

Paragraph 1 of section 5 of the said act of Congress is as follows:

"That no law shall be enacted in said Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws."

It will be noted that this amendment does not prohibit the enactment of laws by the legislative department of the Philippine Government, depriving persons, of life, liberty, or property. It simply provides that laws shall not be enacted which shall deprive persons of life, liberty, or property without due process of law. The question, then, is presented, Is the act under which the defendant is prosecuted here and under which it is sought to deprive him of the money winch it is alleged he attempted to illegally export, in accordance with due process of law?

The Congress of the United States, on the 2d day of March, 1903, passed an act entitled "An act to establish a standard of value and to provide for a coinage system in the Philippine Islands." Section 6 of said act is as follows:

"SEC. 6. That the coinage authorized by this act shall be subject to the conditions and limitations of the provisions of the act of July first, nineteen hundred and two, entitled 'An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes,' except as herein otherwise provided; and the Government of the Philippine Islands may adopt such measures as it may deem proper, not inconsistent with said act of July first, nineteen hundred and two, to maintain the value of the silver Philippine peso at the rate of one gold peso, and in order to maintain such parity between said silver

Philippine pesos and the gold pesos herein provided for * * *

In pursuance to the authority granted in said section 6, to wit, "the Government of the Philippine Islands. may adopt such measures as it may deem proper, * * * to maintain the value of the silver Philippine peso at the rate of one gold peso * * * the Civil Commission enacted Act No. 1411, dated November 17, 1905, which act was entitled "An act for the purpose of maintaining the parity of the Philippine currency in accordance with the provisions of sections one and six of the act of Congress approved March second, nineteen hundred and three, by prohibiting the exportation from the Philippine Islands of Philippine silver coins, and for other purposes."

Sections 1 and 2 of the said act of the Civil Commission are as follows:

"SECTION 1. The exportation from the Philippine Islands of Philippine silver coins, coined by authority of the act of Congress approved March second, nineteen hundred and three, or of bullion made by melting or otherwise mutilating such coins, is hereby prohibited, and any of the aforementioned silver coins or bullion which is exported, or of which the exportation is attempted subsequent to the passage of this act, and contrary to its provisions, shall be liable to forfeiture under due process of law, and one-third of the sum or value of bullion so forfeited shall be payable to the person upon whose information, given to the proper authorities, the seizure of the money or bullion so forfeited is made, and the other two-thirds shall be payable to the Philippine Government, and accrue to the gold-standard fund: Provided, That the prohibition herein contained shall not apply to sums of twenty-five pesos or less, carried by passengers leaving the Philippine Islands.

"SEC. 2. The exportation or the attempt to export Philippine silver coins, or bullion made from such coins, from the Philippine Islands contrary to law is hereby declared to be a criminal offense, punishable, in addition to the forfeiture of said coins or bullion as above provided, by a fine not to exceed ten thousand pesos, or by imprisonment for a period not to exceed one year, or both, in the discretion of the court."

It will be noted that the Civil Commission expressly relied upon the act of Congress of March 2, 1903, for its authority in enacting said Act No. 1411.

Under the question above suggested it becomes important to determine what Congress intended by the phrase "due process of law." This phrase has been discussed a great many times by the Supreme Court of the United States, as well as by writers upon questions of constitutional law. This same idea is couched in different language in the different constitutions of the different States of the Union. In some the phrase is "the law of the land." In others, "due course of law." These different phrases, however, have been given practically the same definition by the different courts which have attempted an explanation of them. The phrase "due process of law," was defined by Judge Story, in his work on Constitutional Law, as "the law in its regular course of administration through the courts of justice."

Judge Cooley, in his work on Constitutional Limitations, says :

"Due process of law in each particular case means such an exertion of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribed for the class of cases to which the one in question belongs."

The famous constitutional lawyer Daniel Webster, in his argument before the Supreme Court of the United States in the case of Dartmouth College vs. Woodward (4 Wheaton, 518), gave a definition of this phrase which the Supreme Court of the United States quoted and adopted. It was:

"By the law of the land is more clearly intended the general law, a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society. Every thing which may pass under the form of an enactment is not, therefore, to be considered the law of the land."

There are but few phrases in the Constitution of the United States which have received more attention by the courts of the United States, in an endeavor to ascertain their true meaning, than have been given to this expression "due process of law." Recently a volume has been published devoted entirely to the meaning of this phrase.

"Due process of law" is process or proceedings according to the law of the land. "Due process of law" is not that the law shall be according to the wishes of all the inhabitants of the state, but simply—

First. That there shall be a law prescribed in harmony with the general powers of the legislative department of the Government;

Second. That this law shall be reasonable in its operation

Third. That it shall be enforced according to the regular methods of procedure prescribed; and

Fourth. That it shall be applicable alike to all the citizens of the state or to all of a class:

When a person is deprived of his life or liberty or property, therefore, under a law prescribed by the proper law making body of the state and such law is within the power of said department to make, and is reasonable, and is then enforced according to the regular methods of procedure prescribed, and is applicable alike to all the citizens or to all the citizens of a particular class within the state, such person is not deprived of his property or of his life or of his liberty without due process of law. When life, liberty, and property are in question there must be in every instance judicial proceedings, and that requirement implies a written accusation and hearing before an impartial tribunal with proper jurisdiction, an opportunity to defend and a conviction and a judgment before punishment can be inflicted, depriving one of his life, liberty, or property. (Story on the Constitution, 5th ed., secs. 1943-1946; Principles of Constitutional Law, Cooley, 434.)

Such have been the views of able jurists and statesmen, and the deduction is that life, liberty, and property are placed under the protection of known and established principles which can not be dispensed with either generally or specially, either by the courts or executive officers or by the legislative department of the Government itself. Different principles are applicable in different cases and require different forms of procedure; in some they must be judicial; in others the Government may interfere directly and ex parte; but in each particular case "due process of law" means such an exercise of the powers of the Government as the settled maxims of law permit and sanction and under such safeguards for the protection of the individual rights as those maxims prescribed have to the class of cases to which the one being dealt with belongs. (Principles of Constitutional Law, Cooley, 434.)

Illustrations might be given indefinitely, showing how the Supreme Court of the United States as well as the courts of the different States of the Union have applied this general doctrine. The question is fully discussed in the following cases: *Murray's Lessee vs. Hoboken Land Co.* (18 How., 272), *Dartmouth College vs. Woodward* (4 Wheaton, 518), *Bank of Columbia vs. Okley* (4 Wheaton, 235), *Walker vs. Sauvinet* (92 U.S., 90), *Cooley's* (Constitutional Limitations {Chap. XI), *Story on the Constitution* (secs. 1943-1940), *Milligan's Case* (4 Wallace, 2), *Davidson vs. New Orleans* (96 U. S., 97), *Slaughter-House Cases* (16 Wallace, 30), and *French vs. Barber Asphalt Paving Co.* (181 U. S., 324), which contains a historic discussion of the general meaning of this phrase.

In the present case the following facts may be noted:

First. That the Civil Commission, on the 17th day of November, 1905, regularly and under the methods prescribed by law, enacted Act No. 1411, providing for the punishment of all persons who should export or attempt to export from the Philippine Islands Philippine silver coins.

Second. That this law had been enacted and published nearly eleven months before the commission of the alleged offense by the defendant.

Third. That a complaint was duly presented, in writing, in a court regularly organized, having jurisdiction of the offense under the said law, and the defendant was duly arrested and brought before the court, and was given an opportunity to defend himself against the said charges.

Fourth. That the defendant was regularly tried, being given an opportunity to hear and see and to cross-examine the witnesses presented against him and to present such witnesses in his own defense as he deemed necessary and advisable.

Fifth. That after such trial the said court duly sentenced the defendant, complying with all the prescribed rules of procedure established.

Sixth. That said Act No. 1411 was duly enacted by the Philippine Commission in pursuance of express authority given said Commission by the Congress of the United States in an act duly approved March 2, 1903.

A question remaining is, Did the Civil Commission have authority to enact said Act No. 1411? Certainly said Commission is limited in its powers. As Daniel Webster said in the famous Dartmouth College case:

"Everything which may pass under the forms of an enactment is not to be considered the law of the land. If this were so, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments, and acts directing and transferring one man's estate to another, legislative judgments, decrees, and forfeitures in all possible forms would be the law of the land. Such a strange construction would render constitutional provisions of the highest importance completely inoperative and void. It would tend directly to establish the union of all the powers in the legislature. There would be no general permanent law for the courts to administer or men to live under. The administration of justice would be an empty form, an idle ceremony. Judges would sit to execute legislative judgments and decrees, but not to declare the law or to administer the justice of the country."

But notwithstanding the limitations upon the power of the Commission, there are certain powers which legislative departments of the Government may exercise and which can not be limited. These are known as the police power of the state. The police power of the state has been variously defined. It has been defined as the powers of government inherent in every sovereignty (License Cases, 5 Howard, 583); the power vested in the legislature to make such laws as they shall judge to be for the good of the state and its subjects (Commonwealth vs. Alger, 7 Cushing, Mass., 85) ; the powers to govern men and things, extending to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the state (Thorpe vs. Rutland and B. R. Co., 27 Vermont, 149) ; the authority to establish such rules and regulations for the conduct of all persons as may be conducive to the public interests (People vs. Hudd, 117 New York, 14). This question of what constitutes police power has been discussed for many years by the courts of last resort in the various States and by many eminent law writers. Blackstone, in his Commentaries upon the common law, defines police power as:

"The defense, regulation, and domestic order of the country whereby the inhabitants of a state, like members of a well-governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood and good manners, and to be decent, industrious, and inoffensive in their respective stations." (4 Blackstone's Commentaries, 162.)

Chief Justice Shaw in the case of the Commonwealth vs. Alger (7 Cushing, 53, 84), said:

"We think it is a settled principle, growing out of the nature of well-ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it shall not be injurious to the equal enjoyment of others having equal rights to the enjoyment of their property, nor injurious to the rights of the community * * *. Rights of property like all other social and conventional rights are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law as the legislature, under the governing and

controlling power vested in them by the constitution, may think necessary and expedient."

The police power of the state may be said to embrace the whole system of internal regulation, by which the state seeks not only to preserve the public order and to prevent offenses against the state but also to establish for the intercourse of citizens with citizens those rules of good manners and good neighborhood which are calculated to prevent a conflict of rights and to insure to each the uninterrupted enjoyment of his own, so far as is reasonably consistent with a like enjoyment of rights by others. The police power of the state includes not only public health and safety but also the public welfare, protection against impositions, and generally the public's best interest. It is so extensive and all-pervading that courts refuse to lay down a general rule defining it, but decide each specific case on its own merits (*Harding vs. People*, 32 Lawyers' Rep. Ann., 445). This power has been exercised by the state in controlling and regulating private business even to the extent of the destruction of property of private persons when the use of such property became a nuisance to public health and convenience. (*Slaughter-House Cases*, 10 Wallace, 36; *Minnesota vs. Barber*, 136 U.S., 313; *Powell vs. Pennsylvania*, 127 U. S., 678; *Walling vs. Michigan*, 110 U.S.446; *Duncan vs. Missouri*, 152 U. S., 377; *Morgan, etc., vs. The Hoard of Health*, 118 U.S., 455; *Jacobson vs. Mass.*, Feb. 20, 1905.)

The state not only has authority under its police power to make such needful rules and regulations for the protection of the health of its citizens as it may deem necessary; it may also regulate private business in a way so that the business of one man shall in no way become a nuisance to the people of the state. It may regulate the sale and use of intoxicating liquors, the sale of poisons, the sale of foods, etc., and it would seem that nothing is of greater importance to the safety of the state, in addition to the regulation of the morals and health of its people, than to regulate and control its own money. In addition to the fact that said Act No. 1411 was enacted in accordance with express permission given by the Congress of the United States, this court has already decided, in the case of *Graspar vs. Molina* (5 Phil. Rep., 197), that the Philippine Commission possesses general powers of legislation for the Islands, and its laws are valid unless they are prohibited by some act of Congress, some provision of the Constitution, or some provision of treaty.

We are of opinion, and so hold, that Act No. 1411 was enacted by the Philippine Commission with full power and authority so to do. We are of opinion, therefore, and so hold, that the lower court committed no error in overruling the demurrer presented by the defendant.

With reference¹ to the second assignment of error above noted, relating to the sufficiency of the proof adduced during the trial of the cause, we are of opinion, and so hold, that the evidence adduced during the trial of the cause was sufficient to justify the findings of fact and the conclusions of the lower court.

An examination of the evidence adduced during the trial of the cause in the lower court shows the following facts to be true:

- That on the 12th day of December, 1906, on board the steamship *Taming*, after the said ship had raised anchor and was ready to sail out of the harbor of Manila for the port of Hongkong, there was found in the room occupied by the defendant the sum of 20, (100 Philippine silver pesos, coined by authority of the act of Congress of the United States, March 2, 1903.
- That the defendant was confronted with the fact that this amount of said money was found in his room, and that he then and there stated that the same had been brought into his room by a Filipino whose name he was unable to give; and that he did not know why the money had been placed there.
- The money was not on the manifest of the ship when she came into the harbor some days before the said 12th day of December, neither was the said money on the manifest of the ship which had already been prepared for the

trip to Hongkong on the said 12th day of December. The said money was taken charge of by W.H. Polley, a detective of the custom secret service of Manila, and was turned over to the Treasurer of the Philippine Islands. The defendant was duly arrested and charged with the crime of attempting to export Philippine silver coin from the Philippine Islands contrary to law.

At the trial of the cause the defendant attempted to show that he had brought the money in question from Hongkong to be exchanged for certain Mexican coin and Spanish coin in Manila. These statements of the defendant were corroborated by a China-man called Wong Tai from Hongkong, and also by the testimony of Juan On Hieng of Manila. The said Wong Tai testified that he had sent the said 20,600 from Hongkong to Manila on the said steamship Taming, for the purpose of buying of the said Juan On Hieng old Spanish silver and Mexican silver; that said money was sent in the care of the defendant.

In support of the statements of Wong Tai the defendant presented an insurance policy or a duplicate copy of an insurance policy alleged to have been issued by a certain Japanese insurance company doing business in the city of Hongkong. No proof was offered, however, to show that said duplicate copy of an insurance policy had actually been issued by said company. The prosecuting attorney of the city of Manila objected to the introduction of the said duplicate policy upon the ground that it had not been sufficiently identified. This objection was overruled. No evidence was presented to show that said company ever, as a matter of fact, issued the said policy. In the absence of proof showing that the document had been issued by the proper authorities, the same should not have been admitted in evidence. The duplicate policy did not prove itself. It was dated on the 4th day of December 1906. In support of the testimony of Wong Tai, the defendant also presented Juan On Hieng as a witness. This witness testified that he had an arrangement with Wong Tai to exchange with him at a certain rate Spanish silver coin and Mexican silver coin for Philippine silver pesos, and that he had an arrangement with a certain Filipino in Manila from whom he was to purchase, said Spanish and Mexican coin. He could not remember, however, the name of the Filipino from whom he was to purchase said coins; neither could he describe him, nor could he tell where the said Filipino resided. We do not believe the statements of these witnesses notwithstanding the fact that they seem to corroborate the statements of the defendant. Courts should not lightly regard the statements of witnesses under oath, but nevertheless when the testimony of witnesses seems to be unreasonable from every standpoint it should be weighed with care, when it comes loaded with the temptations of private interests and the impressions of personal penalties; if the defendant had not been guilty of attempting to violate the law, there would have been no occasion for him to have stated at the time the money was found in his room what were the true facts, and then there, would have been no difference between his statements then and the statements he made at the time of the trial. These conflicting statements lend much suspicion to the veracity of the defendant as well as to the truth of the statements of the witnesses called in his behalf. The evidence also shows that Philippine silver coin was worth, at the time the coins in question, were shipped, about 9 per cent more in bullion than they were as money.

For all of the foregoing reasons, we are of the opinion, and so hold, that the sentence of the lower court should be affirmed with costs. So ordered.

Arellano, C.J., Torres, Mapa, Carson, and Tracey, JJ., concur.

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