

ONG CHANG WING AND KWONG FOK, PLAINTIFFS IN ERROR, VS. UNITED STATES.

G.R. No. 418. November 07, 1910

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Constitutional Law; Due Process op Law; Affirmance of Conviction Under Statute Since Repealed.—The due process of law secured to the people of the Philippine Islands by the Act of July 1, 1902 (32 Stat. at L., 692, chap. 1369), section 5, was not denied by the affirmance in the Supreme Court of the Philippine Islands of a conviction of the offense described in Philippine Penal Code, article 343, which was repealed after the conviction and sentence in the Court of First Instance by the Act of the Philippine Commission of October 9, 1907, Act No. 1767, the repealing act also providing for the punishment of the same offense, and within limitations not exceeded by the sentence imposed under the former act.

The plaintiffs in error bring this case here for review by writ of error to the Supreme Court of the Philippine Islands, upon the ground that the effect of the judgment of that court has been to deprive them of due process of law, in violation of section 5 of the Act of Congress of July 1, 1902 (32 Stat. at L., 692, chap. 1369), enacting the due process clause of the Federal Constitution as a part of the statute for the Government of those islands. No other question is presented in the record which we can review.

The plaintiffs in error were tried, convicted, and sentenced on October 4, 1907, in the Court of First Instance, for violation of section 343 of the Philippine Penal Code, which makes it an offense to conduct a gambling house, or to be a banker therein. Plaintiffs in error were sentenced in the court of first instance to two months and one day of arresto mayor, with the accessories of section 61, and to pay a fine of 625 pesetas, and in default thereof to suffer subsidiary imprisonment, not to exceed one third of the principal penalty, and costs.

Upon appeal to the Supreme Court of the Philippine Islands, that court held that the guilt of the appellants was fully established, and affirmed the judgment of the court of first instance. In the supreme court the plaintiffs in error made the objection, which is the foundation of the proceedings here, that they were convicted under the provisions of article 343 of the Philippine Code for an offense committed on the 15th of September, 1907; that thereafter the Philippine Commission, on October 9, 1907, by an Act Numbered 1757, repealed, among others, article 343 of the Philippine Penal Code, and that consequently the court had no authority to impose upon the appellants the penalty prescribed in the repealed article of the Code. The Supreme Court of the Islands denied this contention upon the authority of another decision in the same court. (*United States vs. Cuna*, 12 Philippine, 241.) A reference to the *Cuna* case shows that the Supreme Court of the Philippines, construing the articles of the local Penal Code, and applying what was deemed the applicable Spanish law, held that whether an act was punishable after the repeal of the act under which it was undertaken to be inflicted depend upon whether or not at the time of the commission of the Act, there was a law in force which penalized it. The court reserved the question whether the punishment provided in the repealing act could alone be inflicted if such penalty is more favorable to the accused than that prescribed in the former Act, because of the provisions of article 22 of the Code, which provides that penal laws shall have a retroactive effect in so far as they favor persons convicted of a crime or misdemeanor.

It appears that the new Act No. 1757, which took the place of the repealed act, article 343 of the Philippine Penal

Code, did not undertake to wipe out the offense of gambling, or keeping a gambling house in the Philippine Islands, but substantially reenacted the former law with more elaboration and detail in its provisions than were contained in the former law.

In the new act section 2 defines a gambling house to be a building or structure or vessel, or part thereof, in which gambling is frequently carried on. Under article 343 of the Penal Code of the Philippine Islands, as it existed when the sentence in this case was imposed, the bankers and proprietors of houses where games of chance, stakes, or hazard are played were punished. The decision of the court of first instance, found in the record in this case, held that, in order to punish the crime of gambling, in accordance with article 343 of the Penal Code, it must appear that the house where the gambling took place was a house devoted to encouraging gambling, as held in various decisions of the Supreme Court of Spain applicable to the case at bar, and that such facts had been fully established by the proof in the case.

The sentence imposed was within the limits provided in Act No. 1757, under which the keeping of a gambling house can be punished. The case, therefore, presented for our consideration, is one of conviction under a statute which was repealed after the conviction and sentence in the court of first instance, the repealing act also providing for the punishment of the same offense, and within limitations not exceeding by the sentence imposed under the former act.

The precise question then is, Did the Supreme Court of the Philippine Islands deny the plaintiffs in error due process of law in affirming a conviction under the circumstances stated? It is argued that the Supreme Court of the Philippines misapplied the provisions of the Penal Code and the Spanish law in the light of which it was interpreted. On the part of the Government it is insisted that, even at common law, the affirmation of a conviction under a law valid when it was had was not erroneous, and that it was within the power of a reviewing court so to do; but we are not concerned with this question. Our sole province is to determine whether the judgment of the Supreme Court of the Philippine Islands amounts to a denial of due process of law.

This court has had frequent occasion to consider the requirements of due process of law as applied to criminal procedure, and generally speaking, it may be said that if an accused has been heard in a court of competent jurisdiction, and proceed against under the orderly processes of law, and only punished after inquiry and investigation, upon notice to him, with an opportunity to be heard, and a judgment awarded within the authority of a constitutional law, then he has had due process of law. (Rogers vs. Peck, 199 U. S., 435; 50 L. ed., 260; 26 Sup. Ct. Rep., 87; Twining vs. New Jersey, 211 U. S., 78; 53, L. ed., 97, 29 Sup. Ct. Rep., 14, and the cases therein cited.)

In the present case there can be no doubt that the law-making power in the Philippine Islands could, by statutory enactment, have preserved the right to prosecute and punish offenses committed in violation of the former law while in force in the islands, notwithstanding the repeal of the act. The effect of the decision of the Philippine Supreme Court is to hold that under the law and local statutes, the repealing act reenacting substantially the former law, and not increasing the punishment of the accused, the right still exists to punish the accused for an offense of which they were convicted and sentenced before the passage of the later act. In other words, the effect of the decision construing the local law is to accomplish what it was clearly within the power of the legislative authority to do by an express act saving the right to proceed as to offenses already committed. The accused have not been punished for a crime which was not punishable when committed by the sentence imposed. The Supreme Court has only held that the right to impose the penalty of the law under the Philippine Penal Code has not been taken away by the subsequent statute. We are unable to see that due process of law, which is the right of a person accused of a crime, when prosecuted within a jurisdiction wherein the Constitution of the United States, or a statute embracing its provisions, is in force, has been denied.

The judgment of the Supreme Court of the Philippine Islands will be affirmed.

Affirmed.

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218 U.S., 54 l. ed., 1049.

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