

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GO-SIACO, DEFENDANT AND APPELLANT.

G.R. No. 5050. January 14, 1909

Ponente: WILLARD, J.

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WILLARD, J.:

The defendant has made a motion that he be admitted to bail pending his appeal in this court.

The proceeding is one brought under the provisions of Act No. 702 relating to the deportation of Chinese laborers found within the Islands without the certificate required by that law. Section 4 of that Act is in part as follows:

"Any Chinese laborer within the limits of the Philippine Islands who shall neglect, fail, or refuse to obtain within the time prescribed by section four of the Act of Congress of the United States referred to in section one of this Act, the certificate of registration by this Act provided to be issued, and who shall be found within the Philippine Islands without such certificate of registration after such time has elapsed, may be arrested upon warrant issued by the Court of First Instance of the province or by the justice's court of the municipality returnable before said Court of First Instance, by any customs official, police, Constabulary, or other peace officer of the Philippine Islands and brought before any judge of a Court of First Instance in the Islands, whose duty it shall be to order that such Chinese laborer be deported from the Philippine Islands, either to China or the country from whence he came, unless he shall affirmatively establish clearly and to the satisfaction of such judge, by at least one credible witness other than Chinese, that although lawfully in the Philippine Islands at and ever since the passage of this Act he has been unable by reason of accident, sickness, or other unavoidable cause to procure the certificate within the time prescribed by law, * * *."

The defendant was arrested on the 24th of July, 1908, in the Province of Tarlac and brought before a justice of the peace, who remitted him, together with the proceedings taken by the justice in the matter, to the Court of First Instance, where, on the 2d day of September, 1908, a complaint was filed against him by the provincial fiscal for violation of section 4 of Act No. 702. A trial was had in that court and on the 29th of September, 1908, a judgment was rendered ordering the deportation of the defendant from the Philippine Islands. From that judgment he appealed to this court and his appeal is now pending herein.

It appeared in the court below that the defendant was born in the Province of Pampanga on the 8th day of September, 1876; that his father was a Chinese and his mother a Filipina woman, who were legally married and that he is their legitimate son; that he left the Islands in 1892 and returned in 1896, and has lived here ever since, and that his father died many years ago.

We are not called upon to decide the case upon its merits, the only question being whether the defendant shall be admitted to bail until that decision is made. The Solicitor-General claims that bail can not be allowed, citing section 5 of the Act of Congress of May 5, 1902 [1892] (Off. Gaz. of March 4, 1903, p. 145.) That section is as follows:

"Sec. 5. That after the passage of this Act on an application to any judge or court of the United States in the

first instance for a writ of habeas corpus by a Chinese person seeking to land in the United States to whom that privilege has been denied, no bail shall be allowed and such application shall be heard and determined promptly without unnecessary delay."

This section by its terms has no application to the case of a Chinese person who is already in the country and whom the authorities are attempting to deport.

The Solicitor-General cites also the Act of Congress of November 3, 1893 (Off. Gaz. of March 4, 1903, p. 146; 28 U. S. Stat. at L., 7.) In section 2 the words "laborer" or "laborers" is defined in the first paragraph. In the second paragraph the word "merchant" is defined. The third and fourth paragraphs are as follows:

"Where an application is made by a Chinaman for entrance into the United States on the ground that he was formerly engaged in this country as a merchant, he shall establish by the testimony of two credible witnesses other than Chinese the fact that he conducted such business as hereinbefore defined for at least one year before his departure from the United States, and that during such year he was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant and in default of such proof shall be refused landing.

"Such order of deportation shall be executed by the United States marshal of the district within which such order is made, and he shall execute the same with all convenient dispatch; and pending the execution of such order such Chinese person shall remain in the custody of the United States marshal and shall not be admitted to bail."

The location of this last clause in the section might make it doubtful as to whether it referred to the order of deportation mentioned in section 1 of the Act or to the order refusing permission to land, mentioned in the clause immediately preceding it, but we think a fair construction of the whole Act indicates that it refers to the order of deportation mentioned in the first section, and as such it would apply to a case of deportation.

The question, however, still remains, whether the paragraph was intended to apply to the order as soon as it was made by the Commissioner or by the district court, if proceedings were first had before the latter, or whether it was intended to apply only after the first order, when made by the Commissioner or the court, had been affirmed on appeal, if an appeal was taken. That an appeal lies in cases of deportation, even to the Supreme Court of the United States is well settled. (United States, petitioner, 194 U. S., 194; Liu Hop Fong vs. United States, 209 U. S., 453.) We see nothing in the Act which necessarily requires us to say that bail can not be allowed pending such appeal. The phrase "and he shall execute the same with all convenient dispatch," on the contrary, indicates that it applies only when the order is in such condition that it can be executed at once, which would not be the case where an appeal had been taken and a supersedeas bond given.

The Solicitor-General further claims that proceedings under Act No. 702 and similar Acts in the United States have there been held not to be criminal proceedings, and that the only provisions relating to bail in force here being provisions that relate to criminal cases, they are not applicable to this case. Among the cases cited in support of this proposition is the case of Fong Yue Ting vs. The United States (149 U. S., 698). This is the case in which the Supreme Court of the United States held for the first time that the Deportation Act was valid. One of the principal contentions against the Act was that it deprived the defendant of the rights which were granted to every one accused of a crime. The court said, at page 730:

"The proceeding before a United States judge, as provided for in section 6 of the Act of 1892, is in no proper sense a trial and sentence for a crime or offense. It is simply the ascertainment, by appropriate and lawful means, of the fact whether the conditions exist upon which Congress has enacted that an alien of this class may remain within the country. The order of deportation is not a punishment for crime. It is not a banishment, in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment.

It is but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the Government of the nation, acting within its constitutional authority and through the proper departments, has determined that his continuing to reside here shall depend. He has not, therefore, been deprived of life, liberty, or property, without due process of law; and the provisions of the Constitution securing the right of trial by jury, and prohibiting unreasonable searches and seizures, and cruel and unusual punishments, have no application."

It will be seen that this declaration is not inconsistent with the view that while the proceeding is not a trial or sentence for a crime or offense, it may in so far use the machinery of the criminal law as to admit of application the provisions in such law relating to bail. It is to be noted, moreover, that in this very case, which however went to the Supreme Court not by appeal from the order of deportation but by appeal from an order denying a writ of habeas corpus, the petitioner was admitted to bail pending his appeal to the Supreme Court.

In the case of *Low Foon Yin vs. The United States Immigration Commission* (145 Fed. Rep., 791), Circuit Court of Appeals, Ninth Circuit, the question was, whether the defendant could be compelled to testify in the proceeding and it was held, citing the case of *Fong Yue Ting* against the United States, that it was not so far a criminal proceeding as to exonerate the defendant from the obligation of testifying. In the case of *In re Lam Jung Sing* (150 Fed. Rep., 608), United States District Court, it was held that the proceeding was not so far criminal in its nature as to prevent the admission on the part of the defendant of depositions of witnesses taken out of court.

On the other hand, in the case of *The United States vs. Lee Ching Goon*, supreme court of Arizona, March 28, 1900 (60 Pacific Rep., 692), the question was, whether the United States had a right to appeal from an order of the Commissioner refusing to deport a Chinese. It was held that it had not. The court said: "The proceeding in this case is special and statutory. It is analogous to a criminal action in the respect that the machinery is criminal."

None of these cases, however, really touch upon the right of the defendant to be admitted to bail. The case of *Ah How vs. The United States* (193 U. S., 65), was an appeal from a judgment of the United States District Court confirming the decision of a Commissioner adjudging that the appellant be removed from the United States to China. The court affirmed the judgment, saying at the end of the opinion:

"We are asked to express an opinion as to the right of the appellants to give bail pending their appeal, but that now is a moot point."

In the case of *Liu Hop Fong vs. The United States* (209 U. S., 453), the defendant appealed from the order of the Commissioner deporting him and was admitted to bail pending his appeal. In that case the court said: "It is a serious thing to arrest a Chinaman who, as in this case, has been in this country a number of years, lawfully admitted upon a certificate complying with the treaty, and order his deportation without giving him a full opportunity to assert his rights before a competent court."

If bail is refused in this case, we do not think it can be said that the defendant has had a full opportunity to assert his rights. He was arrested, as has been said, on the 24th of July, 1908. He has been in confinement ever since that time and if bail is refused will have to remain a prisoner until the decision of his case in this court. If our decision be adverse to him, he will have the right to remove the case to the Supreme Court of the United States and will have to remain in jail during the pendency of that appeal. Rather than endure confinement for that length of time, he might well say that he would abandon his appeal and surrender the rights which the law has given to him.

Upon principle, we see no reason why bail should not be allowed in this class of cases. As is said by the Supreme Court, the defendant has committed no crime. In this particular case the defendant was born in this country, has lived here for more than 35 years and is now living here with his mother, a native of the Islands. There is no reason to think that his being at large will be any menace to the people in the locality where he resides, nor is

there any reason to believe that his attendance at court to abide the judgment which may be entered against him can not be secured by the giving of bail as in ordinary cases. To refuse him bail is to treat him as a person is treated who has committed the most serious crime known to the law, and while we do not intend to say that this is a criminal proceeding, we do say that some of the machinery used for making the investigation required by Act No. 702 is the machinery of the criminal law, and to it are applicable those provisions of General Orders, No. 58, relating to bail.

The motion is granted, and upon being notified of this decision, the Attorney-General will indicate the amount of the bond which in his opinion the defendant should furnish, and upon the filing and approval of the bond in such amount as may be fixed by the court, after hearing the Attorney-General, an order will be made releasing the defendant. So ordered.

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

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