

HEINRICH BEISNER, PLAINTIFF AND APPELLANT, VS. JUAN SEIBOTH, DEFENDANT AND APPELLEE.

G.R. No. 5698. December 02, 1911

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PER CURIAM:

This is a motion for a reargument after judgment of this court in favor of the defendant for the sum of P902.13 given upon a counterclaim to a complaint for the penalty under the alien contract labor law.[1]

This court based its decision upon the opinion of the court below and affirmed the judgment upon the facts therein stated and the law therein applied.

We see no reason to enlarge upon the opinion of the court below. We merely summarize the grounds of our affirmance:

- There is no question whatever that the defendant induced the plaintiff to come to these Islands under a contract to labor.

- There is no question that if the plaintiff had been an unskilled laborer the defendant would be liable for the penalty prescribed by the statute, or if a skilled laborer and it appeared that the defendant had not strictly complied with the law before importing him he would still be liable.

- It was established to the satisfaction of the court below and it found that the plaintiff was a skilled laborer. We can not say, after a careful examination of the record, that it is an improper conclusion from the facts presented. It appears from the testimony that the defendant required an educated young German who could read and write German well; who was well taught and thoroughly experienced as a salesman; who could not only make the sales that the usual clerk makes but could also attend to the correspondence of the firm; who was qualified to overlook the invoices and determine the correctness of prices; and who could, when required by the defendant, substantially manage the business; and that the plaintiff met these requirements fully. The defendant is a large dealer in gents' furnishings and other articles, and one who can perform such services as the defendant swears he required of the plaintiff and which the plaintiff actually performed for him is, in our judgment, a skilled laborer, if a laborer at all within the meaning of the Act.

- The trial court found that, before importing the plaintiff, the defendant had made every reasonable effort to obtain a person in the Philippine Islands sufficiently skilled to occupy the position which the plaintiff took under the contract referred to, and that after such efforts he was unable to find any person unemployed with the qualifications which the plaintiff had, which qualifications were necessary in any person before he could properly fill the position which the plaintiff later occupied. We have carefully examined the record upon this question and

we can not say that the learned trial court found against the fair preponderance of the evidence. The defendant testified that he had made every effort reasonably possible to obtain in the Philippine Islands a man to occupy the position; that such person was necessary to the proper management of his business; that he had advertised in the newspapers of Manila and had made personal inquiries among business men and had several times visited the German consulate in Manila for the purpose of obtaining the assistance of the German consul in securing a young German competent to fill the position referred to; that such advertisements and inquiries were wholly unproductive. While the documentary proof relative to the advertisements in the newspapers referred to does not show all of the facts above stated, nevertheless, such documentary evidence does not represent all of the proof in the record relating to such advertisements. It should be borne in mind that the defendant distinctly states in his testimony that he did make such advertisements, although he was able to find only the documentary proofs relating to advertisements for other employees at other times.

- The learned trial court found that the advertisements and inquiries referred to in the previous paragraph were sufficient, although they covered only the Philippine Islands. We agree with that conclusion. We do not believe it would be a reasonable interpretation of the law to hold that before a skilled laborer could be imported into the Philippine Islands it would be necessary to search every possession of the United States Government, insular and continental, for an unemployed person qualified to fill the position to which the person imported was intended before such importation could be made. Such construction would make it substantially impossible to comply with the law.

The plaintiff presented the following assignment of errors:

"The court erred:

"(1) In sustaining defendant's demurrer to the original complaint. This ruling compelled plaintiff to amend his complaint, and to allege and prove affirmatively that labor of like kind unemployed could be found in this country. And further, in the language of the court in its ruling on page 19, that it could be found 'En estas Islas' to wit, in the Philippines.

"(2) In overruling plaintiff's demurrer to the amended answer, special defense and cross complaint; thereby -

"(a) Allowing defendant to set up the alleged contract and importation (a prima facie case under the statute) and then to demand and to obtain affirmative relief under said contract. The decisions show that the essence of this offense is not the making of the contract, but assisting to import an alien laborer already under contract. The contract might be with a third person, who would not be liable under this section. Hence defendant should not be allowed to set up or to recover under this contract, which is nothing but a piece of evidence in this suit.

"(b) Uniting a civil suit based on contract, with one based on a highly penal statute. It is impossible for any court to rule fairly or comprehensively upon any given piece of evidence, under these conflicting and irreconcilable issues. The vital question is: Is defendant guilty of a violation of the statute? If guilty, the penalty and recovery are practically automatic.

"(c) Compelling plaintiff to defend a civil suit by his tutor, who was specially appointed by this court for the sole purpose of prosecuting this suit based upon a penal statute.

"(3) In admitting the cablegram of March 18, 1904, from Sternberg at Washington, D. C., to Grunenwald at Manila; and the letter of May 6, 1905, of W. M. Shuster to Dr. Franz Grunenwald. (Defts. Ex. 1 and 2.) And all evidence relative thereto. The cablegram is secondary evidence at best, and both letter and cablegram are irrelevant and immaterial.

" (4) In admitting defendant's three advertisements and receipted bills therefor. (Ex. 3, 4, 5, and 9.) And all evidence relating thereto.

"(5) In admitting Grunenwald's evidence on page 31, et seq., in regard to intervention in the cases of alien employees imported under contract.

"(6) In admitting evidence in relation to the case of an alien named Bull (pp. 32, 33). This was a habeas corpus petition, and the facts set up under oath and never denied, easily distinguish it from this case. Bull came of his own volition, with his own money, and without condition, contract, etc., with any person in Manila, etc., in regard to his services after arrival. Yet, while the case was dismissed, petitioner was condemned to pay costs. While the original evidence on pages 32, 33, etc., was admitted over plaintiff's objection, it seemed essential that the court should have a complete rather than a partial view, so plaintiff introduced the entire record. (Ex. E.)

"(7) In rulings adverse to plaintiff throughout the evidence, particularly in sustaining defendant's objection to the following question, on the ground of immateriality: 'When you made this contract in Germany had you money to pay your passage and expenses to Manila?' (p. 88).

"(8) In denying plaintiff's motion for a new trial.

"(9) In giving judgment for defendant and against plaintiff on the action under the penal statute, and affirmative judgment for defendant on the cross complaint, contrary to the weight of the evidence."

The first error assigned needs no attention in particular inasmuch as, if it was an error, it resulted in no injury to the plaintiff, the defendant having proved to the satisfaction of the trial court upon his own behalf and with his own witnesses that labor of like kind unemployed could not be found in this country at the time of the importation complained of. The defendant having proved this affirmatively, it leaves the plaintiff without grounds of complaint. The burden which the amendment to his complaint placed upon him was upon the trial wholly assumed by the defendant himself.

Relative to the second error assigned, it may be said that the matter to which it refers is covered entirely by statute, section 95 of the Code of Civil Procedure providing for the whole situation thoroughly and completely. Such section reads:

"Defendant having counterclaim.- The defendant may set forth by answer as many defenses and counterclaims as he may have, whatever their nature. They must be separately stated, and the several defenses must refer to the cause of action which they are intended to answer, in a manner by which they may be intelligently distinguished. The defendant may also answer one or more of the several causes of action stated in the complaint, and demur to the residue." (Feliciano vs. Del Rosario, 6 Phil. Rep., 70.)

The finding of the trial court upon the counterclaim is sustained by the evidence.

As to the third error assigned, concerning the admission of the cablegram and other evidence relating thereto, it may be disposed of by saying that the error, if any, committed in its admission was without prejudice to the plaintiff inasmuch as the construction given by the trial court to the Act of Congress is perfectly sustained by the ordinary rules of construction followed by courts without reference to constructions given by the officers administering the Act.

As to the fourth error assigned, relative to the introduction of oral testimony regarding the publication of notices advertising for a competent person to fill the position which plaintiff was brought to this country to occupy, it may be said that the defendant showed, in effect, before or at the time of testifying to the matter objected to, that he was unable to produce the printed notices, the inference being that they were lost or destroyed. As to the printed

notices relating to advertisements at other times and the error assigned as to their admission as evidence, it is enough to say that whatever their character or nature or whatever their competency or relevancy, they are entirely without influence in the decision of this case, they not being advertisements for a person to fill the position which plaintiff occupied and not having, therefore, any bearing whatever on the merits of the case. There is a possible exception as to one of them; if that one is an exception, the very fact that it is makes it competent.

The error pointed out as number five, relating to the admission of the testimony of Mr. Grunenwald, is in the same class as error specified as No. 3. That part of his testimony objected to relates to the interpretation put upon the alien immigration law by the customs officials of these Islands. The interpretation of the statute is a question of law. The method followed in getting before the court the construction given to the law by the customs officials, evidence admittedly competent, does not present a serious question.

What is said here may be said also of error assigned as No. 6.

As to error No. 7, the exclusion of the evidence offered by the plaintiff resulted in no harm, inasmuch as the court expressly found that the alien imported fell within the prohibition of the statute except for the fact that he was a skilled laborer and that he had been imported as such. The evidence offered by the plaintiff which was excluded by the court was for the purpose of establishing the fact that at the time he made the contract and at the time he came to this country he was without funds of his own. This evidence could have no material bearing upon the issues except to prove the fact already admitted that the defendant had paid plaintiff's fare and had aided and assisted him to come to this country in violation of law. The court below, as well as this court on appeal, has found the fact to be that if the plaintiff had not been a skilled laborer his importation would have fallen within the prohibition of the statute, conceding that he was a member of the class of laborers described in the Act.

The other two errors assigned by the appellant need no attention in particular, they having been resolved in the discussion of the others.

The case has been twice, and on separate occasions, carefully considered by this court and we can see no reason for changing the opinion which we formed upon the first investigation.

The motion for reargument is denied.

Torres, Mapa, Johnson, and Moreland, JJ.

Carson, J., dissents.

[1] Short decision of September 1, 1911, 20 Phil. Rep., 585 (Notes)

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