

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. YAP KIN CO,
DEFENDANT AND APPELLANT.***G.R. No. 6918. March 25, 1912*

Ponente: TRENT, J.

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On the 29th of June, 1910, the appellant, Yap Kin Co, was found in the city of Manila at work as an ordinary day laborer. On failure, to produce his registration certificate after having been demanded to do so by the customs authorities, a sworn complaint, signed by the duly authorized agent of the Bureau of Customs, was presented in the Court of First Instance of this city, charging him with not having complied with the provisions of Act No. 702, touching the registration of Chinese persons. Upon this complaint the Honorable A. S. Crossfield issued a warrant for the arrest of the appellant on the 8th of July, 1910. He was arrested and released on bond. On the case being called for hearing on the first day of September of the same year, the appellant appeared and stated to the court that he was a merchant and resident of Cebu; that his witnesses, by whom he could establish these facts, lived in that city; and that it would be very prejudicial and expensive to be compelled to bring his witnesses to the city of Manila. Thereupon the court directed that the record as thus made up be sent to the Court of First Instance of Cebu and that the appellant appear in that court on or before the 15th day of September, 1910, to answer the charge filed against him. The record was received and the case duly docketed for hearing in the Court of First Instance of Cebu. The appellant, through his counsel, interposed a demurrer to the complaint based upon three grounds: (1) That the court was without jurisdiction to try the case; (2) that the complaint was not drawn in conformity with the prescribed requirements; and (3) that the facts alleged therein did not constitute a crime. The demurrer was overruled and exception noted. The case then proceeded to trial upon the original complaint which had been presented in the Court of First Instance of the city of Manila, and judgment was rendered directing that the appellant be deported by the customs authorities to the city of Amoy, China. From this decision an appeal was taken in due form to this Supreme Court.

Counsel for the appellant makes the following assignment of errors: (1) That the court erred in overruling the demurrer; and (2) that the court erred in deciding that the appellant is not a citizen of the Philippine Islands and in ordering his deportation.

The question involved in the first error assigned is whether or not the Court of First Instance of Cebu acquired jurisdiction upon the complaint presented in the Court of First Instance of the city of Manila. In this complaint it is alleged that the appellant, on or about the 29th of June, 1910, was a Chinese laborer in the city of Manila and was found in the Philippine Islands without having acquired the registration certificate required by Act No. 702 of the Philippine Commission.

The proceedings which took place, starting in the Court of First Instance of the city of Manila and terminating in the Court of First Instance of Cebu, were in no sense a trial and sentence for a crime, but simply the ascertaining of the fact whether, under the existing law, an alien of this class might remain in the country. The order for deportation is not a punishment for a crime. (*Li Sing vs. U. S.*, 180 U. S., 486; *Wong Wing vs. U.S.*, 163 U. S.,

228; *Fong Yue Ting vs. U. S.*, 149 U. S., 698; *U. S. vs. Wong Dep Ken*, 57 Fed. Rep., 206; *In re Sing Lee*, 54 Fed Rep., 334.) Section 4 of Act No. 702 provides that any Chinese laborer within the limits of the Philippine Islands who shall neglect, fail, or refuse to obtain the certificate of registration as required in said act, and who shall be found within the Philippine Islands without such certificate of registration after the time has elapsed may be arrested upon a warrant, issued by the Court of First Instance or by the justice's court of the municipality, returnable before said Court of First Instance, by any customs official or other peace officer, and brought before any judge of a court of First Instance in the Islands, It will be noted that a Chinese laborer may be arrested upon a warrant issued by the Court of First Instance and when once arrested may be brought before any judge of such court in the Philippine Islands. In other words, the warrant for the arrest may be issued out of a Court of First Instance and the investigation held by any judge of such court in this country. The same construction was placed upon a like provision by the United States District Court in the case of *U. S. vs. Long Hop* (55 Fed. Rep., 58). Again, it will be remembered that the appellant himself caused the transfer, for his own convenience, of the case from Manila to Cebu.

"In statutory construction, arguments of convenience often address themselves strongly to the court. As was aptly stated by Mr. Chief Justice Marshall in *United States vs. Fisher* (2 Cranch, 386), 'Where great inconvenience will result from a particular construction, that construction is to be avoided unless the meaning of the legislature is plain, in which case it must be obeyed.' " (*In re Wong Fock*, 81 Fed. Rep., 558.)

We therefore conclude that the demurrer presented by the appellant was properly overruled by the court below.

With reference to the question raised by the second assignment of error, it appears that the appellant is a Chinese person, born in China in 1870, of Chinese parents. The appellant testified that his father, Yap Suanco, came to the Philippine Islands sometime during the year 1882, leaving his wife, Lim Sui, and family in China; that he accepted the Catholic faith, married Colasa Viyco, a Filipina, acquired property, both real and personal, and had a fixed home, where he remained until his death, which occurred in the Province of Pampanga in 1892; that he (the appellant) left his mother and followed his father to this country, arriving here in the same year, 1882, and remained with his father until the latter's death; that from the time of his father's death up to the date of the commencement of these proceedings, he has had no fixed home for more than a few years at a time; that the greater part of this time he has been engaged in the occupation of a peddler, traveling from one place to another in the provinces, carrying his wares, and selling the same in small quantities; and that since his arrival in 1882 he has remained constantly in the Philippine Islands with the exception of one trip to China, where he spent about one and one-half years, some fourteen years ago.

The appellant claims to be a citizen of this country and says he never intends to return to China to make that country his home, and that he does not owe allegiance to the country of his birth. He admitted on the trial of this case in the Court of First Instance of Cebu that he never has acquired a certificate of registration, but relies upon his right to remain here by virtue of being a citizen, as he claims, of the Philippine Islands. It is not now even contended that he has a right to remain in this country by reason of belonging to one of the exempt classes, or for any other reason except that of being, as he claims, a citizen. The testimony of the appellant on the important question as to whether or not he has acquired citizenship (if such could be acquired in any manner by a Chinese person) is not corroborated or supported by any other evidence whatever. He called no witnesses, notwithstanding the fact that he secured the transfer of the case for that purpose. The trial court did not believe that the appellant was telling the truth. This conclusion was reached after a very careful examination of this testimony, together with the significant fact that the appellant could not speak with any degree of fluency, either the Spanish language or any of the dialects. It would appear that, if he had been living in this country for more than twenty-eight years and traveling most of the time in different provinces, on account of the nature of his business, he would necessarily have acquired Spanish or one of the dialects. Again he testified before the customs authorities in Manila that he

had acquired a certificate of registration but that he had lost the same, while in Cebu he admitted that he never had acquired such a document. The trial court very properly declined to believe the testimony of the defendant.

The order or judgment appealed from is therefore affirmed, with costs against the appellant.

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

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