

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TAN YAK,
DEFENDANT AND APPELLANT.***G.R. No. 7211. August 25, 1913*

Ponente: CARSON, J.

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The appellant in this case was arrested upon a warrant based upon a sworn complaint filed by the collector of customs of the port of Zamboanga, charging that he is a Chinese laborer, "found within the Philippine Islands" without the certificate of registration prescribed for such persons under the provisions of Act No. 702 of the Philippine Commission.

In pursuance of the proceedings for the deportation of Chinese laborers found without such certificate, as set forth in that Act, he was brought before the judge of the Court of First Instance of Zamboanga, who ordered his deportation. From the order of deportation this appeal was perfected, substantially in the manner prescribed for appeals in criminal cases, but the evidence upon which the trial judge based his order of deportation, if any such evidence was in fact submitted to him, does not appear to have been reduced to writing, and, whether it was or was not so reduced to writing, has not been brought here on appeal.

Counsel for the appellant, who appears to think that the proceedings looking to the deportation of a Chinese laborer had under and by virtue of Act No. 702 constitute a criminal action, insist that throughout the proceedings the appellant was deprived of various constitutional rights enumerated in his brief. Doubtless counsel's contentions would have to be sustained if his assumption that the appellant was entitled to the rights and privileges of an accused person in a criminal action was well founded. But it has frequently been decided that deportation proceedings are not criminal in their nature, so as to give to the defendant the rights and privileges of one accused of the commission of a crime. (U. S. vs. Go-Siaco, 12 Phil. Rep., 490; U. S. vs. Hung Chang, 134 Fed. Rep., 19, and cases there cited; Nishimura Ekiu vs. U. S., 142 U. S., 651; Fong Yue Ting vs. U. S., 149 U. S., 698; The Japanese Immigrant Case, 189 U. S., 86.)

There is, however, one defect in the proceedings, to which counsel invites our attention, which justifies and necessitates the reversal of the order issued by the trial judge, and the return of the record for a new trial. No record of the evidence submitted in the court below has been brought here, and it is impossible for us, therefore, to review the findings of the trial judge, or to render a judgment either affirming or reversing the judgment based thereon.

Ordinarily, in accordance with the practice adopted in this court, we would, under such circumstances, issue appropriate orders for the completion of the record by uniting thereto a certified copy of the evidence taken at the hearing in the court below. But it is very clear that the issuance of such orders in the case at bar would be a vain formality, as the record clearly discloses that if any evidence was in fact submitted at the hearing, no written record thereof was preserved. The Solicitor-General in his brief admits or rather asserts "that no notes of the testimony were taken in the court below," and we are satisfied not only from his admission, but from a careful

review of the whole record brought before us, that if any testimony was in fact taken, it was not reduced to writing, and that it cannot therefore be certified to this court for review in accordance with the practice in this jurisdiction.

In the discussion of this case in the body of the court, a number of questions were raised as to the proper procedure in appeals in cases of this kind. Questions arose as to the right of the defendant in deportation proceedings to an appeal to this court; as to whether if the right to appeal exists, the record should be brought here by bill of exceptions, or by an appeal perfected as was that in the case at bar; as to whose duty it is to bring up the written evidence in cases of this kind; and as to whether, in any event, this court is charged with the review of the evidence taken at the hearing in the court below, for the purpose of determining whether the facts as found by the trial judge are or are not supported by the evidence.

We may admit at once that the provisions of Act No. 702 touching deportation proceedings are so incomplete as to render it necessary in determining the proper steps to be adopted in a given case to look for guidance to the general rules of practice and procedure as prescribed by law and followed in this jurisdiction, having in mind the nature of the proceedings and the purpose and object for which, under the law, these proceedings may be instituted. In the case of the United States vs. Lee Chiao (23 Phil. Rep., 543) we pointed out that while this Act (No. 702) provides for the making of the arrest of the persons who may be made parties defendant in deportation proceedings, "there is no provision whatever relating to the sworn complaint upon which the warrant of arrest may be issued" or as to the persons who may make, the sworn complaint. Nevertheless, this court, by a unanimous vote, declared that such a complaint must be presented, and at the same time, it definitely determined the persons who are authorized to present it. As will be seen by an examination of that decision, we arrived at our conclusions in that case from a consideration of the very nature of the proceedings, and of the purpose and intent of Congress in authorizing the local Legislature to make provision for such proceedings. In like manner, in the case at bar, it becomes necessary to supply the deficiencies or omissions of the Act, touching the manner in which the testimony is to be taken and appeals perfected from orders of deportation issued in the Courts of First Instance.

Section 18 of Act No. 136, by virtue of which the courts in these Islands were organized, provides that:

"The Supreme Court shall have appellate jurisdiction of all actions and special proceedings properly brought to it from Courts of First Instance, and from other tribunals from whose judgment the law shall specially provide an appeal to the Supreme Court."

The proceedings had in deportation cases are special proceedings in Courts of First Instance, and since there is no provision giving to those courts exclusive jurisdiction and expressly denying the right of appeal, there can be no doubt that this court has appellate jurisdiction over all such proceedings when properly brought before it.

There is nothing in the statute (Act No. 702) which would indicate the intention of the Legislature to deprive this court of appellate jurisdiction in proceedings of this nature. It is true that the statute does not specifically prescribe the form in which the appeal should be perfected; but in the absence of clear and unmistakable language, such as that used in connection with election contest proceedings in the statute providing therefor, such an omission falls far short of being sufficient to deprive this court of its general appellate jurisdiction, conferred in general terms in the Organic Act, No. 136.

Having arrived at the conclusion that this court has appellate jurisdiction over these proceedings (which, indeed is not seriously questioned), the next question for consideration is the mode whereby they are to be brought to this court for review. The cases which have been brought before us heretofore, both on appeal by the defendants and by the Government, have come here substantially in the manner prescribed in criminal cases, that is to say by the certification of the whole record in the court below to this court for review. But it is contended that since these

deportation proceedings are not in fact criminal proceedings, they should be brought here by bills of exception in the manner and form prescribed for civil actions in the Code of Civil Procedure. We cannot agree with this contention.

While it is true that it has been repeatedly held by the Federal courts of the United States and by this court that deportation proceedings are not criminal actions, it must also be remembered that they are not ordinary civil actions in the sense in which that word is used in those provisions of the Code of Civil Procedure prescribing the procedure in the court below and the steps whereby such actions are brought to this court for review by bills of exception. They are rather in the nature of special administrative investigations instituted and conducted by the Government with a view to ascertain whether under the law one alleged to be a Chinese laborer, residing within the Islands, is or is not entitled to remain there under the law, wherein a judicial hearing is provided for the ascertainment of certain facts, upon which under the Act of Congress an order of deportation may be based. And while the submission of the proceedings in this manner to the judicial power has all the essential "elements of a civil case—a complainant, a defendant, and a judge—actor, reus et iudex" nevertheless it is very clear that under the statute, the hearing may be had without regard to the technical formalities prescribed in the case of the actions and special proceedings contemplated in the code. (*Fong Yue Ting vs. U. S.*, 149 U. S., 698, 730, 731.) Act No. 702 provides only the merest skeleton of a form of procedure, and provided an opportunity to be heard is furnished the defendant and provided a trial is had according to some form of judicial proceeding capable of developing the facts so that judgment can be rendered thereon in the court below and so that the proceedings can be reviewed by this court on appeal, it is very evident that the legislator did not intend that the trial judge should be hampered with the rules of procedure laid down in the Civil Code for the conduct of ordinary civil actions. (*The Japanese Immigrant Case*, 189 U. S., 86.) It follows, we think, that it could not have been and was not the intention of the legislator to require appeals in these proceedings to follow the course prescribed in ordinary civil actions, since the mode prescribed in the code for the bringing of such actions to this court on bills of exception would necessarily involve the strict or at least a substantial adherence in the course of the hearing to the procedure laid down in the code in ordinary actions.

Holding as we do that this court has appellate jurisdiction over hearings of this nature, and the method prescribed in the code whereby ordinary civil actions are brought to this court not being applicable, it would be our duty, under the authority of section 6 of the Code of Civil Procedure, to prescribe if necessary the method whereby our appellate jurisdiction may be invoked in these cases; and no simpler or more direct method could well be devised than that actually adopted in this case, that is to say, the certification by the clerks of the Courts of First Instance of the whole record to this court in any case wherein one or other of the parties announces his desire to appeal. But we do not deem it necessary formally to prescribe a rule for these cases, because (1) the method adopted in the case at bar is the uniform method heretofore adopted, both by the Government and the defendants, in all cases of this character which have come before us heretofore, so that the procedure may be practically regarded as settled in practice, and because (2) we are well satisfied that it was the intention of the legislator that these cases should come up to this court in the form adopted in the case at bar, which is the form prescribed in criminal actions, and, we may add, substantially the form whereby all judicial proceedings were required by law to be brought up on appeal (*en ambos efectos*) under the law in force prior to the enactment of the Code of Civil Procedure. At the time when Act No. 702 was enacted, judicial proceedings in Courts of First Instance were brought here for review either in accordance with the provisions of the Code of Civil Procedure or in accordance with the provisions of General Orders, No. 58, prescribing the procedure on appeal in criminal cases. As we have seen, the procedure prescribed in the Code of Civil Procedure is inapplicable to the deportation proceedings authorized in Act No. 702. It would seem, therefore, that the legislator either wholly neglected to provide an appropriate mode of procedure on appeal in such cases or that he anticipated and expected that the form prescribed in criminal cases

would be adopted. We are satisfied, as we have said, that the legislator did not intend to deprive this court of its appellate jurisdiction in these cases, and we think we may fairly conclude that he intended that the appellate procedure prescribed in criminal cases would be followed.

The procedure adopted in deportation proceedings is strikingly similar in general outline to the procedure in ordinary criminal cases. They are instituted on a sworn complaint filed by certain specified Government officials. This is followed by the issuance of a warrant of arrest and the arrest and detention of the defendant. Then follows the judicial hearing and the judgment of the court ordering the deportation of the defendant. True, the proceeding is essentially a civil case in its nature, and the defendant is not entitled to the constitutional safeguards thrown around one who is charged with the commission of a crime (save only that the facts must be ascertained in the course of an orderly judicial hearing, wherein he has the right to an opportunity to be heard before judgment is pronounced); but it is molded in a form so nearly assimilated in its skeleton outline to that prescribed in criminal cases that we think we may fairly hold (in the absence of any other prescribed form of procedure on appeal) that the appropriate procedure in bringing the case to this court on appeal, and the procedure contemplated by the Legislature, is the procedure prescribed in criminal cases. And that procedure having been adopted in practice, and no other procedure suitable to the nature of the proceedings having been prescribed, we conclude that we would not be justified in dismissing this appeal on the ground that it has not been properly brought before us.

In regard to the question as to whether it is the duty of the trial courts to take in writing the evidence on which their findings of fact are based in deportation proceedings we think there can be no doubt. In all other proceedings in the Courts of First Instance the evidence is required to be taken in writing, and no reason can be suggested for the adoption of a different rule in deportation proceedings. Indeed, it is absolutely essential that the testimony should be taken in writing, because unless it is so taken, it would be impossible for this court to review the evidence in the exercise of its appellate jurisdiction. Under no mode of procedure authorized or adopted in practice in these Islands is it possible for this court to review the findings of fact made by the trial judge, unless the evidence is taken in writing in the court below. To hold that the trial judge in proceedings of this nature may go forward hearing testimony, without having such testimony reduced to writing either in longhand or in stenographic notes, would be tantamount to placing it in his power to deprive this court of the appellate jurisdiction over the proceedings in the court below, which is secured to it in Act No. 136. It may be proper to add, however, that of course this rule has no application in a case where, under the terms of the statute, judgment is rendered in default when the defendant admits the jurisdictional facts and offers no evidence in rebuttal of the presumption that he is a Chinese laborer.

We think that the duty of bringing up the evidence in cases of this kind clearly rests upon the Government. The proceedings are instituted and conducted by the Government. At the very outset, the defendant is arrested and he is held in detention awaiting the final action of the court. The hearing had in the Court of First Instance is summary in the extreme. These courts are all provided with official stenographers, who receive a fixed monthly salary. In practice, these stenographers are required to take down in shorthand the testimony of all witnesses called to testify in those courts. It would seem that under such circumstances, the duty of certifying the evidence together with the rest of the record up to this court, upon appeal, would normally and naturally fall upon the clerk. In appeals in criminal cases this is the uniform practice, and no reason suggests itself why it should not be followed in proceedings of this nature. Strong and indeed compelling reasons forbid the imposition upon the defendant of the burden of expense which he would be compelled to bear were he required to bring the evidence up on appeal. The imposition of such a burden would practically amount in many if not in most cases of this kind to a denial of the right of appeal. In the absence of express statutory requirement to the contrary, we think that sound practice and the natural course of procedure in the courts of these Islands impose the duty on the Government, through its clerks and official stenographers, to preserve in writing and to certify the testimony taken

in deportation cases to this court for review in any case where an appeal is duly perfected.

What has been said practically disposes of the question of the duty and the jurisdiction of this court to review the evidence taken in the court below. Under the procedural system in force in these Islands, which does not contemplate or provide for jury trials, an appeal wherein the appellant could be denied the right to have the findings upon the evidence reviewed by this court would be an anomaly indeed. Having arrived at the conclusion that the defendant in deportation cases is entitled as of right to an appeal, it follows as of course, that if he so desires, this court will review the evidence upon which the findings of fact by the trial judge are based.

In conclusion, it may be well to point out that nothing we have said in this opinion should be understood as a denial on our part of the right of the legislator to deny, or to qualify in any way he sees fit, the right of appeal in deportation proceedings. Indeed, we do not question the power of the legislator, should he see fit so to do, to place the exclusive jurisdiction to determine the facts involved in deportation cases in boards specially constituted for that purpose (similar to those charged with like duties under the immigration laws where an alien is seeking to enter the country), and thus altogether to deny jurisdiction over such cases to the ordinary courts of the country. (*Nishimura Ekiu vs. U. S.*, 142 U. S., 651.) Our rulings in this case go no further in this regard than to hold that the legislator having seen fit to intrust the determination of the facts in deportation cases to the Courts of First Instance, the proceedings had at the judicial hearings thus provided for must be adequate and appropriate to secure to the defendants in such cases an opportunity to be heard before judgment, and to have the proceedings conducted under such conditions that the parties, if they so desire, can secure a review of those proceedings upon appeal to this court.

The order directing the deportation of the defendant and appellant should be and is hereby reversed, and a new trial should be and is hereby ordered, with the costs of this instance de oficio.

Arellano, C J., Torres and Trent., JJ., concur.

DISSENTING

MORELAND, J.,

I am forced to dissent in this case for the reason that, in my judgment, the decision is fundamentally erroneous.

As the decision says, the proceeding appealed is one taken under Act No. 702 of the Philippine Commission, Upon a hearing before a judge of the Court of First Instance of Zamboanga it was found that the defendant was not in possession of the certificate required by said Act No. 702, and that he failed to establish affirmatively and clearly 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 the Act, he had been unable by reason of accident, sickness, or other unavoidable cause to procure the certificate within the time prescribed by law." The judge, pronouncing penalty after such findings, ordered the defendant deported from the Philippine Islands pursuant to the Act of Congress referred to. The defendant appealed to this court. The evidence taken at the hearing was apparently not reduced to writing and therefore was not sent to this court as a part of the record on appeal.

The decision in this case holds (1) that Act No. 702 is a deportation Act; (2) that, although the Act says nothing about a right to appeal by either party, nevertheless either party may appeal as in ordinary actions; (3) that the proceeding is a special proceeding within the meaning of section 18, Act No. 136, and of the Code of Civil Procedure and that an appeal lies for that reason; (4) that, although the proceeding is a special proceeding, the

appeal must be taken under the Code of Criminal Procedure precisely as in criminal actions; (5) that the defendant not only has a right to appeal in such proceeding, but that the Government is obligated and required to reduce the testimony taken at the hearing to writing and to furnish a transcript thereof for the record in the case on such appeal, all at its own expense; (6) that, although the proceeding is a civil proceeding, the defendant is under no obligation to furnish the evidence or prepare the record on appeal as is required in all other appeals in civil cases; (7) that, if the Government does not cause such evidence to be taken and made a part of the record on the defendant's appeal, he is, for that reason alone, entitled to a new trial as this court cannot make the review of the evidence to which appellant is entitled; (8) that, in appeals in these proceedings we will not adhere to what has been up to this moment the unchallenged doctrine of this court in appeals in civil cases, namely, that if the appellant does not bring the evidence to this court the judgment will be affirmed upon the facts stated in the opinion of the court if those facts are sufficient to sustain the judgment, but, instead, we will, in such case, set aside the judgment and remand the case for a new trial.

Although several appeals in proceedings under Act No. 702 have been heard and decided in this court, the question as to the right of an appeal has never been raised, argued or considered; and although that question is jurisdictional and the court itself should, perhaps, have raised it, nevertheless, I shall here take it that the question is in part at least an open one—sufficiently so to permit me to express an opinion therein. If this court is without jurisdiction in these appeals, or if there is serious doubt about whether the court has it or not, it ought to be presented so that the proper legislature may take such action, if any, as is deemed advisable.

I. The opinion, in my judgment, misconceives the nature and purposes of Act No. 702. The decision proceeds upon the theory that Act No. 702 is a deportation act and apparently bases important conclusions on that fact. This appears all through the opinion. This, in my judgment, is an error fundamental in character. It is not a deportation act but a registration act. It was passed, as stated in the title, in pursuance and wholly under the authority of section 4 of an Act of Congress approved April 29, 1902. Said section reads as follows:

"That it shall be the duty of every Chinese laborer, other than a citizen, rightfully in, and entitled to remain in any of the insular territory of the United States (Hawaii excepted) at the time of the passage of this Act, to obtain within one year thereafter a certificate of residence in the insular territory wherein he resides, which certificate shall entitle him to residence therein, and upon failure to obtain such certificate as herein provided he shall be deported from such insular territory; and the Philippine Commission is authorized and required to make all regulations and provisions necessary for the enforcement of this section in the Philippine Islands, including the form and substance of the certificate of residence so that the same shall clearly and sufficiently identify the holder thereof and enable officials to prevent fraud in the transfer of the same: Provided, however, That if said Philippine Commission shall find that it is impossible to complete the resignation herein provided for within one year from the passage of this Act, said Commission is hereby authorized and empowered to extend the time for such registration for a further period not exceeding one year."

From reading this section it is clear that it was not the intention of Congress to authorize the Philippine Commission to pass a deportation act. This the Philippine Commission fully understood when it passed Act No. 702. Therefore the primary purpose was not to pass a deportation act, but substantially the contrary. It was not to expel Chinese laborers from the insular territory of the United States but to give them an opportunity to remain there; it was not to deprive them of rights, but, rather, to secure them irrevocably in the rights which they then had, by registering them in such a way that they could easily be identified from those who subsequently entered surreptitiously or otherwise illegally; it was not to deprive them of the status which they then enjoyed, but to give them a certificate which would not only justify but guarantee that status. The deportation provided for in the Act was merely a punishment or penalty for a refusal to take advantage of the act. The issues, therefore, in a proceeding under the Act of Congress and Act No. 702 were not in essence and in substance, shall the defendant

be deported, but, rather, has he the certificate required by said Act, or, if he has it not, can he give a legal excuse for his failure to have it. These are the questions which the judge decides on the hearing. The first and primary question before the judge is not, shall the defendant be deported, any more than is the primary question before a court in a murder trial, shall the defendant be hanged. The issue in a murder case is whether or not the accused committed the acts charged against him. Whether he be hanged or be sentenced for life is nothing more than the result of the determination of the issues unfavorably to the defendant—is the punishment to be inflicted. In the same way the issues before a judge in proceedings under Act No. 702 are not, shall the Chinaman be deported? They are, as I have said, has he the certificate, and, if he has not, has he a proper excuse for its absence? If the court in a murder trial finds that the accused committed the acts charged, then the issues in the case pass to the judgment of conviction; nothing but the punishment remains. So when a judge of the Court of First Instance in the proceedings before us finds that the defendant has not the certificate and that he has no legal excuse for not having it, then the case is tried, the issues pass into judgment and nothing remains but the penalty.

Under the Act of Congress referred to, the Philippine Commission had no authority to pass a deportation act even if it had attempted to. Its sole duty was "to make all regulations and provisions necessary for the enforcement of this section in the Philippine Islands, including the form and substance of the certificate of residence so that the same shall clearly and sufficiently identify the holder thereof and enable officials to prevent fraud in the transfer of the same."

II. The court erred in holding that an appeal lies in the case before us.

In this connection the decision of the court, in my judgment, is against the weight of American authority and, in principle, overrules one of the previous decisions of this court. It is admitted that the statute under consideration nowhere expressly gives the right to appeal. I take it to be a well-settled doctrine that a right of appeal (the word is used here in its broad sense) exists only in cases prescribed by constitution or statute, and that, if no such right is given by statute or constitution, expressly or by necessary implication, it does not exist. In the case of *Pavon vs. Philippine Islands Telephone and Telegraph Company* (9 Phil. Rep., 247) the court said at page 249, quoting *Sullivan vs. Haug* (82 Mich., 548, 555):

"The right to an appeal is and always has been statutory, and does not exist at common law. It is a remedy which the legislature may in its discretion grant or take away, and it may prescribe in what cases, and under what circumstances, and from what courts, appeals may be taken; and unless the statute expressly or by plain implication provides for an appeal from a judgment of a court of inferior jurisdiction, none can be taken."

Mr. Justice Clark, associate justice of the supreme court of North Carolina, in his article *An Appeal and Error*, in 2 Cyc, says at page 517:

"Consequently, the remedy by appeal in actions at law is purely of constitutional or statutory origin, and exists only when given by some constitutional or statutory provision;" citing decisions from *Arkansas*, *Colorado*, *District of Columbia*, *Illinois*, *Michigan*, *Minnesota*, *Missouri*, *Nebraska*, *New York*, and *Wisconsin*.

In the case of *Bosley vs. Ackelmire* (39 Ind., 536) it was held that a proceeding before a board of county commissioners to relocate a county seat is a special proceeding, for a special purpose, based upon a special statute which gives no right of appeal; and said proceeding, being special, cannot be governed by the general statute granting appeals; and, therefore, no appeal lies from the decision of the board of county commissioners therein. (See also *Hanna vs. Board*, 29 Ind., 170; 40 Ind., 61, 217.) In the case of *Harvey vs. Pealer* (63 Mich., 572) it was held that: "The right of appeal is in all cases a statutory right. If not given by statute, it does not exist. It did not exist in any case or proceedings for dissolution of attachments until given by the act of 1881."

In the case of *Steele vs. Shirley* (17 Miss., 382) it was held that: "The right of appeal to the high court of errors and appeals is regulated by law; therefore, where there is no law authorizing an appeal and prescribing its

terms and mode, no right of appeal exists."

In the case of *Webb vs. Hanson* (2 Cal., 133) the court held that: "There being no statutory provision for an appeal, and the case not falling within the constitutional provision, this court had no jurisdiction over the matter." (See also *Blum vs. Brownstone*, 50 Cal., 293; 65 Cal., 650; 67 Cal., 457; 83 Cal., 620.)

In the case of *General Custer Mining Company vs. Van Camp* (2 Idaho, 40), it was held that:

"The right to appeal is statutory, and unknown to the common law; it cannot be extended to cases not within the statute.

"The right of appeal given by statute from orders of the board of commissioners does not imply the right of appeal from orders of the board of equalization."

In the case of the *City of Portland vs. Nottingham* (58 Ore., 1), the court said: "An appeal is not a matter of primary right. It is a privilege, and he who would enjoy that privilege must show some statute conferring it upon him. (*Portland vs. Gaston*, 38 Ore., 533; *Sears vs. Dunbar*, 50 Ore., 36; *Union National Bank vs. Barth*, 179 111., 83.)"

See also *Blumauer-Frank Drug Co. vs. Horticultural Fire Relief of Oregon* (59 Ore., 58); *Estate of Scheftels vs. Scheftels* (141 Wis., 307); *Aneta Mercantile Company vs. Groseth* (20 N. D., 137.)

In the case of *Hanika vs. State* (87 Neb., 845), the court said, relative to appeals: "We have also held: 'An appeal, in the technical sense of the term, is a remedy which exists only by force of statute and within the limits defined by statute.' (*Pollock vs. School District*, 54 Neb., 171.) The right of appeal did not exist at common law. This right is purely a statutory one, and unless expressly conferred does not exist.' (*State vs. Bethea*, 43 Neb., 451.) We find no provision in our statute for an appeal in a contempt proceeding."

See also *Tie and Timber Company vs. Drainage Co.* (226 Mo., 420); *Millar vs. Transit Co.* (216 Mo., 99); *Davis vs. Wheeler* (215 Mo., 605.)

In the case of *United States Gypsum Co. vs. Kent Circuit Judge* (150 Mich., 668), it was held that unless the statute expressly confers the right to appeal in condemnation proceedings the right does not exist, the court saying:

"The single question presented here is: Does 1 Comp. Laws, sec. 669, permit an appeal in such cases from the probate to the circuit court? It is said the question was answered in the affirmative in *Defoe vs. Bay Circuit Judge* (116 Mich., 567). It is the general rule that unless the statute expressly gives an appeal there is no appeal, nor can a review be had by writ of error, in special or extraordinary proceedings, not according to the course of the common law. (*Lorimer vs. Wayne Circuit Judge*, 116 Mich., 682; *Cross vs. People*, 8 Mich., 113; *Smith vs. Superintendents of the Poor*, 34 Mich., 58; *Auditor General vs. Pullman Palace Car Co.*, 34 Mich., 59; *Detroit, etc., R. Co. vs. Hall*, 133 Mich., 302; *Boyne City, etc., R. Co. vs. Anderson*, 146 Mich., 328 (8 L. R. A. (N. S.), 306); *Sparrow vs. Ingham Circuit Judge*, 109 Mich., 272.) Proceedings to condemn land are special and summary in character and, while subject to judicial review and supervision for certain purposes, are not judicial proceedings."

In the case of *Randolph vs. City of Indianapolis* (172 Ind., 510), the court said: "Proceedings for the assessment of costs and damages for street improvements are special, and no appeal lies from orders made therein except where the statute expressly grants such right."

The decision apparently seeks to escape the consequences of these decisions by asserting that there is a law giving the right to appeal. It claims that the proceeding to determine whether or not a certain Chinese laborer has a certificate, or in lieu thereof can present the excuse provided for in Act No. 702, is a special proceeding as defined by the Code of Civil Procedure, and for that reason an appeal lies by virtue of section 18 of Act No. 136 of the

Philippine Commission. This is the Act under which the courts of these Islands were organized and their jurisdiction granted. Said section provides that:

"The Supreme Court shall have appellate jurisdiction of all actions and special proceedings properly brought to it from Courts of First Instance and from other tribunals from whose judgment the law shall specially provide an appeal to the Supreme Court."

The argument is that this section permitting an appeal in special proceedings and the proceeding under Act No. 702 being a special proceeding, the appeal lies.

The first error in this contention is the assumption that the proceeding under Act No. 702 is the special proceeding referred to in section 18 of Act No. 136. The term "special proceeding" was there used by the Legislature in the sense in which it was generally used and understood in the law. Its definition is so well known and its meaning so generally accepted that to include within it a proceeding under a highly special statute, passed under highly special authority, having for its object the determination of whether or not a Chinese laborer has a certain certificate or could give a reason for his failure to have it, does violence, in my humble opinion, to the definition itself and to judicial learning on the subject.

Aside, however, from the legal definition of the term "special proceeding," the contention that the proceedings under said Act are special proceedings under the procedural law is overcome by the provisions of the Code of Civil Procedure itself. What are known in this jurisdiction as special proceedings are found in Part II of Act No. 190, commonly called the Code of Civil Procedure. Part II embraces chapters 25 to 52 and sections 522 to 783, inclusive. Neither the proceeding under Act No. 702 nor anything remotely resembling it is found, described, or even mentioned as a special proceeding in those pages or elsewhere in the Code of Civil Procedure.

Moreover, the case of *Domingo vs. Warden of Bilibid* (1 Phil. Rep., 542), decided by a unanimous court, is, in principle, theory, and result, a complete refutation of the claim of the decision at bar that the proceeding under that Act, simply because it is a special proceeding, is appealable even though there is no express-statute authorizing it. In that case "a writ of habeas corpus was granted petitioner, Juana Domingo, by the Court of First Instance of the city of Manila, and upon a hearing she was discharged from the custody of the respondent who held her under a conviction and sentence of the municipal court of Manila for the district of South Pasig. From the decision of the Court of First Instance the Government" appealed to this court. A motion was made to dismiss the appeal on the ground that the chapter of the Code of Civil Procedure dealing with the writ of habeas corpus being silent on the subject of the appeal, no appeal lay and the appellate court had no jurisdiction. The contention made by the moving party in the argument of that case and the ground upon which the decision turned was, admitting that habeas corpus is a special proceeding, as it unquestionably is under chapter 26 of the Code of Civil Procedure, would an appeal lie by either party, said chapter 26 being silent upon the question of appeal. If we admit for a moment the contention of the court in the case at bar that the proceeding under Act No. 702 is a special proceeding, then we have complete identity in principle between the case at bar and that of *Domingo vs. Warden*. The court in the last case, discussing the question whether an appeal would lie in habeas corpus when no right of appeal was expressly granted in the chapter of the Code of Civil Procedure dealing with the writ of habeas corpus, said:

"We will not attempt to review the judgment of the Court of First Instance in making this order, in view of the conclusion which we reach, that this court has no jurisdiction over the appeal.

"The Code of Civil Procedure, 1901, is divided into two parts—Part I relating to civil actions and Part II to special proceedings. The difference between the procedure in civil actions and in special proceedings relates, principally, to the powers of the judge or court.

"Under this classification various proceedings have been denominated as special proceedings, such as the appointment of guardians, trusts and trustees, wills, and allowances thereof, the settlement of estates of deceased persons, etc., and among them proceedings in habeas corpus.

"All civil actions are brought to this court by bill of exceptions, while special proceedings are brought here by the procedure denominated 'appeals in special proceedings.'

"Chapter 42 of the Code of Civil Procedure regulates these appeals and specifically provides for the different classes of cases appealable.

"Thus, section 773 provides for an appeal from an allowance or disallowance of a claim.

"Section 778, for appeals from the settlement of account of administrators, executors, trustees, or guardians.

"Section 781, for appeals in case of allowance or disallowance of wills.

"Section 782, for appeals from decree of distribution, and finally,

"Section 783 regulates appeals in other cases affecting settlement of estates.

"We also find in section 772 an appeal allowed in cases of adoption and custody of minors.

"It will be 'seen by an examination of these sections the right to appeal is given in every character of special proceedings except the special proceeding of habeas corpus. It has not been deemed proper that appeals should be taken in this character of proceedings, as is evident by the failure to make provision for such appeal.

* * * * *

"The appeal in this case is therefore dismissed with costs de officio."

Again, admitting for the moment that a proceeding under Act. No. 702 is a special proceeding, the case of *Domingo vs. Warden*, from which I have quoted, is legally identical with the case at bar. Both involve special proceedings—habeas corpus is a special proceeding specifically named so by the code, and the proceeding under Act No. 702 is a special proceeding under the admission. Neither the statute dealing with habeas corpus nor Act No. 702 has anything to say about an appeal. Yet, in spite of this similarity and parallelism, the results in the two cases are in perfect opposition. While the decision in the case at bar holds that under such circumstances an appeal will lie from a proceeding under Act No. 702, the other case holds that under the same circumstances an appeal will not lie in habeas corpus.

If the court in *Domingo vs. Warden* held, as it did unanimously, that there was no appeal in habeas corpus (admitted in that case as in this to be a special proceeding and specifically mentioned and described as such in the Code of Civil Procedure) and based that opinion exclusively on the silence of the code, that is, on the fact that in the chapter dealing with the writ of habeas corpus an appeal was not expressly granted, how can this court, without squarely reversing the doctrine laid down in *Domingo vs. Warden*, hold in the case at bar that an appeal will lie although the statute governing the proceeding is silent on the subject of appeal, the proceeding not even being mentioned as a special proceeding in the Code of Civil Procedure or in any other act or law? *Domingo vs. Warden* held that no appeal lay—even in a proceeding so important as habeas corpus unless the right thereto was expressly granted by law. The case at bar holds that even in an administrative proceeding an appeal does lie although all statutes and codes are silent on the subject.

It seems to me that the reasoning in the two cases is irreconcilable, the principles laid down are in contradiction and the conclusions reached are as far apart as the poles. There can, therefore, be no question that the present case overrules the principle laid down in the case of *Domingo vs. Warden* and establishes a jurisprudence on that

subject precisely opposite to that heretofore known in this jurisdiction.

It should be noted that section 18, Act No. 136, was in force when *Domingo vs. Warden* was decided and was necessarily therein construed.

Section 18 of Act No. 136, when properly interpreted, does not support the decision, although we look at it separately and apart from all other provisions of law. To my mind it is, on the contrary, a refutation of that contention. As we have seen, it provides that:

"The Supreme Court shall have appellate jurisdiction of all actions and special proceedings properly brought to it from the Courts of First Instance and from other tribunals from whose judgment the law has specially provided an appeal to the Supreme Court."

I call particular attention to that portion of the section emphasized. This clearly contemplates that the Legislature may create a tribunal not strictly a court of justice with duties quite distinct from those generally recognized as belonging to such courts, and make special provisions for appeals in the cases which come before it. The section, therefore, provides for appellate jurisdiction from two classes of bodies: Courts and tribunals not courts. From the first the right to appeal was granted by that section. From the second appeals were denied unless the statute creating the tribunal should expressly provide therefor. Now, into which class falls the tribunal before which is heard the proceeding in the case at bar ?

The answer to this question will necessarily call attention to another fundamental error in the decision I am discussing. The opinion continually refers to the tribunal before which the proceeding under Act No. 702 was had as "a Court of First Instance." This is inaccurate both under the Act and the general principles of the law. The proceeding under the statute shall be taken before a judge of the Court of First Instance. While the warrant, in the words of the statute, is issued "by a Court of First Instance" and is returnable before it, the statute requires that the defendant be heard before a judge of the Court of First Instance. Under all the circumstances of this case this distinction is important. Having in mind the nature of the hearing and the duties to be performed, it might just as well have been left to a collector of customs, to a provincial governor or to any other administrative or executive officer as a judge of a Court of First Instance. The proceeding, as I have already said, was simply to determine whether or not a given Chinese laborer had registered. The evidence relating to that fact was within the hands of the customs authorities. Indeed, the whole matter of registration is left by the act to the customs authorities. There exists no legal reason why the decision of that question should not have been left also to the customs authorities. The reason why it was not done was not legal but practical. At the time the act was passed the only available person before whom these proceedings could be brought was a judge of the Court of First Instance. There was a judge in substantially every province with officials and staff ready to carry out the provisions of the law. No other official was so well equipped—in fact, it would have been extremely difficult to find any other official in a given province who could have been relied upon to meet the situation.

The fact that the administration of that law was left to a judge does not mean that he acted under that law as a court. Having in view the nature of the proceeding and the purposes of the law, it is clear that he did not act as a court as that word is understood and accepted, but as an administrative officer. The procedure laid out and the duties to be performed are of such a character as to demonstrate conclusively that it was not intended that the judge would act as a court. As soon as it should be determined that the person brought before the judge was a Chinese laborer and that he did not possess the certificate required by the Act, it was provided that the judge should deport him from the Philippine Islands "unless he shall affirmatively establish clearly to the satisfaction of such judge, by at least one credible witness other than Chinese, that, although lawfully within the Philippines 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." From this it is clear that the judge had

substantially nothing to do but put the defendant on his defense. The fact that he was a Chinese person could be determined easily, by appearance, name, dress, and by personal questions. Whether he had a certificate was easily determined by a search of his person. These two facts determined, the defendant was put to his defense. These proceedings have very few of the requisites of judicial proceeding in strict sense and none of its formalities. They are in no deep sense similar to proceedings before the Courts of First Instance of the Philippine Islands.

The determination of whether or not a Chinaman is registered as provided by law has never been regarded anywhere as a question for a court. It is one for the executive or the administrative authorities. It is so intimately connected with the laws relating to immigration that it has generally been left with administrative officers instead of with courts of justice. The only reason why the legislature left the determination of that question to a judge and not to an administrative official was, as I have said, that he was the only available person to whom it could be left.

Much appears in the prevailing opinion about "the intention of the legislator" relative to the right of appeal in these cases, the court saying¹: "There is nothing in the statute (Act No. 702) which would indicate the intention of the Legislature to deprive the court of appellate jurisdiction in proceedings of this nature," and "We are satisfied * * * that the legislator did not intend to deprive this court of its appellate jurisdiction in these cases * * *."

In the first place, this seems to me to be an inverted sort of reasoning. The primary question is not whether the Legislature intended to "deprive this court of appellate jurisdiction," but whether the Legislature intended to give this court appellate jurisdiction in these cases. The Act being highly special, passed pursuant to special authority of Congress to meet a situation suddenly arising in territory just acquired, a situation requiring prompt action and quick and definite results, which would be greatly prejudiced if complicated with the difficulties, annoyances, and delays incident to trials and appeals at law, a situation involving a subject almost invariably left by the Legislature to administrative officials—under such circumstances, should the first determination of the court be, Did the Legislature intend to deprive this court of appellate jurisdiction? or should it be, rather, Did the Legislature ever intend to grant appellate jurisdiction?

In the second place, this reference in the decision to the intention of the Legislature raises the question, What power had the Philippine Commission to intend anything in respect to the Act of Congress? Where is there any authority to the Commission to have any intention whatever in the premises? The Act of Congress, in its essentials, is not subject to any intention of the Commission. That Act is of itself the sole force and power relative to the registration and deportation of Chinese laborers. To it nothing can be added and from it nothing can be taken away. It cannot be said then, that the Commission had any intention with respect to the Act. The officials enforcing the law are acting with the power granted them by Congress, not by the Commission. While they may have been named by the Commission, their authority is from Congress. In the same way the rights and restrictions granted to and laid upon Chinese laborers were the work of the Congress. The Philippine Commission has no authority or power to grant a single additional right or lay on a single additional restriction. Whence, then, comes the power to grant an appeal? This is a privilege and a valuable right. Did Congress grant it? No. If it had intended to do so it would have said so. It passed the Act with full knowledge of the law that an appeal does not lie unless expressly granted by statute—a rule particularly applicable to proceedings relative to immigration and deportation of Chinese. With this knowledge it was silent as to the right, thereby refusing to grant it. Could the Philippine Commission have conferred, even if it had tried, which it did not, that right by the roundabout way of leaving the question of registration to a court?

But even if it had been left to a Court of First Instance, and there is much basis in the statute for the claim that the question was left to a court and not to a judge, it does not at all follow that the court was acting as a Court of First Instance within the meaning of the law and that an appeal would follow as matter of right. It seems to me that it is going very far to contend that a proceeding to determine the mere question of whether a Chinese person was

registered with the customs authorities should be left to a Court of First Instance with all of the entangling results necessarily following. Such a proceeding is of the most summary character; it is intended to be such. It must be remembered that its purpose is simply to ascertain whether a Chinese laborer has complied with the reasonable request of the government under which he is living. The proceeding is not to take from him his rights. It is to determine whether he has met the reasonable requirements of the government and thereby assured his own rights. While the registration of Chinese laborers then in the Islands was of importance to the Government to enable it to distinguish between those who were then in the Islands and those who came in thereafter, it was also of great importance to the Chinese, as it protected the rights which they then had from molestation in the future. It was not beneficial to the Government alone; it was beneficial to the Chinese also. For this reason it was considered by Congress that a Chinaman who did not take advantage of it within a year should be deemed to have been so negligent as to his right to remain and so unresponsive to the just demands of the Government as to have waived his right and substantially to have consented to deportation. Under such circumstances it was not considered that the Chinaman was entitled to all the remedies of a trial in court and to the appeal which might follow if the tribunal before which he was brought were actually a court. Accordingly the proceeding was regarded as administrative, the judge was appointed an officer for the purpose of carrying it to its conclusion, and, in pursuance of that idea, it was made most summary in character. Who can imagine the right to appeal existing under such circumstances?

For these reasons I am of the opinion that the proceeding under Act No. 702 is not one before a Court of First Instance in the sense used in the decision in this case.

But even if the proceeding was in a Court of First Instance and was entitled to all of the formalities of a trial, the right to an appeal does not follow. In addition to the reasons above given I am of the opinion that under the Act of Congress heretofore referred to the Philippine Commission had no power to grant an appeal. As heretofore noted, the Philippine Commission was given the power simply "to make all regulations and provisions necessary for the enforcement of this section in the Philippine Islands," and to extend the time for such registration in case it could not be completed within the year named by Congress. Under this authority it is clear to my mind that the Philippine Commission could not have given the right to appeal even if it had attempted to do so in express language. An appeal was not a "regulation" or a "provision" and certainly was not "necessary to the enforcement of this section." It does not, therefore, fall within the powers of the Commission. Its authority was simply to execute what Congress had ordered. The Philippine Commission was not authorized to enact a registration act nor a deportation act. It was authorized simply to make such provisions as would carry out a registration and deportation act already passed by Congress. It should be noted that the Chinese are registered not by virtue of Act No. 702 but by virtue of the Act of Congress. They are deported not by virtue of Act No. 702 but by virtue of the Act of Congress. That Act says:

"That it shall be the duty of every Chinese laborer * * * to obtain within one year thereafter a certificate of residence, * * * and upon failure to obtain such certificate as herein provided he shall be deported * * *."

Congress having itself enacted the meat and kernel of the law left only the merest incidents to the Philippine Commission. It did not authorize the Philippine Commission to grant any privilege to the defendant not specified by the Act. The Commission was to enforce the Act, not to add to it; it was to carry out its provisions, not to make new ones. Nowhere in the Act of Congress can be found authority to the Philippine Commission to grant an appeal. No reason exists why an appeal should be given to Chinese laborers who have refused for at least eighteen months to meet a reasonable condition laid upon them as much for their own benefit as for the Government's.

For these reasons I contend that the Philippine Commission had no power to grant an appeal in the proceeding before us. This reasoning works both ways—it shows that it was not intended that the hearing should be a trial in

court, and it proves that no right of appeal exists.

III. Even if an appeal is conceded to lie in proceedings of this character, the practice followed by the court is not proper.

I do not stop to consider the proposition that, although the proceeding is admittedly a civil proceeding, nevertheless an appeal therein must be taken as in criminal actions. This it seems to me needs no comment. I have to say only that, even though the appeal be held to be as in criminal actions, it can, in the very nature of things, be such only in part at most, and there ought to remain some of the vestiges of a civil procedure. I do not believe that a Chinaman who is so inattentive to the laws of his adopted country and so careless of his own rights that he deliberately violates the one and disregards the other should be given greater privileges in the courts of the land than a law-abiding citizen. In civil cases no citizen of the Philippine Islands can, on an appeal, require the Government, at its own expense, to furnish him a lawyer, make his record in the Court of First Instance, prepare the record on appeal, and send it to the appellate court. Even a citizen who declares himself a pauper and prosecutes his case as such must furnish his own lawyer and prepare his record in the Court of First Instance at his own expense. In the case at bar the court holds that a foreigner who has violated the laws of the Philippine Islands and who has carelessly permitted his own rights to be forfeited is entitled to more consideration in a court of justice than is any innocent citizen of that same country, whether rich or poor.

Again, I am unable to conceive why a Chinaman, guilty of a deliberate violation of the laws of his adopted country and careless of the preservation of his own rights, should be entitled to the application of more liberal rules on appeal than an innocent citizen. It is conceded law that, where a citizen of the Philippine Islands and, up to the decision in this case, any other person, takes an appeal in a civil case and fails or neglects to bring to the appellate court the evidence taken before the Court of First Instance, he will not be permitted to discuss the evidence on appeal and this court will not consider such evidence or any part thereof, but will refer simply to the decision of the trial court, and, if the facts therein stated are sufficient to support the decision, it will be affirmed, with costs against the appellant. No new trial will be granted the appellant in such case even though he asks for it. When, however, says the court in this decision, a Chinaman takes an appeal from a decision of the judge in proceedings under Act No. 702, although he may concededly have violated the laws of his adopted country and may have concededly been guilty of gross negligence in the protection of his own rights, nevertheless, if the evidence taken before the judge is not brought up on appeal, this court will not treat him as it did the innocent citizen but will not only not preclude him from presenting the evidence and decide the cause upon the facts stated in the opinion of the judge, but will go so far as to reverse the decision and give him a new trial.

The judge states in his decision that the defendant was given the hearing required by law; and that from the evidence adduced thereat he found all the facts necessary to declare that the defendant was a Chinese laborer within Act No. 702, who had not the certificate required by the Act and was unable to present the excuse for its absence prescribed therein. These facts are sufficient to sustain the judgment and penalty, and the judgment should be affirmed, if it be conceded that the court has jurisdiction to hear the appeal. Against this statement of the judge nothing whatever appears. The appellant offers nothing to show that he has in any way been prejudiced. He presents nothing but his brief to attack the record made by the judge. It does not appear that the judge committed any error. To set aside and remand under such conditions is at least unusual.

I have not overlooked the fact that the Act of Congress approved September 13, 1888, provides that:

"Any such Chinese person convicted before a commissioner of a United States court may, within ten days from such conviction, appeal to the judge of the district court for the district."

This right to appeal cannot, in my judgment, be extended to any proceeding except that provided for by that Act.

The Act was passed for the purpose of preventing, except upon certain conditions, the return to the United States of Chinese laborers who had left the United States. It has no application to Chinese laborers who were in the Philippine Islands at the time of the passage of the Act of Congress of April 29, 1902, and who failed to obtain, within the time prescribed by that Act and by the subsequent Act of the Philippine Commission, the certificate of registration therein required.

The appeal should be dismissed and the defendant remanded for deportation under the judgment appealed from.

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