

CHAN YICK SAM, PLAINTIFF AND APPELLANT, VS. THE PROSECUTING ATTORNEY OF THE CITY OF MANILA, DEFENDANT AND APPELLEE.

G. R. No. 9166. October 01, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

The present was an original action commenced in the Court of First Instance of the city of Manila. Its purpose was to secure a writ of prohibition against the prosecuting attorney of the city of Manila, to prohibit him from making a certain investigation which he had been ordered to make by the Governor-General of the Philippine Islands, which order of the Governor-General was based upon Act No. 2113 of the Philippine Legislature.

It appears from the record that on the 1st of March, 1913, W. H. Bishop, then prosecuting attorney of the city of Manila, gave to the plaintiff herein a notice in words and figures as follows:

"To CHAN YICK SAM, 604 Calle Gandara.

"Whereas, it has been called to the attention of His Excellency, the Governor-General, by the Chinese Consul-General, that you are a foreigner, residing within the Philippine Islands, and that you are a person whose deportation, expulsion, exclusion or repatriation is subject to investigation, under the provisions of Act No. 2113 of the Philippine Legislature of February 1, 1912, and

"Whereas, His Excellency has designated the undersigned as his agent to notify you of the proposed investigation and hearing, and to take the testimony in reference to such charge and to report with my recommendation the result of such hearing,

"This is to notify you that I am citing a number of witnesses to appear before me at my office, at No. 53 Calle Palacio, Walled City, P. I., upon March 5, 1913, at 8 o'clock a. m. on behalf of the prosecution.

"The charges are of inciting the perpetration of action against the safety, welfare and peace of the Chinese community of the city of Manila' and of being a person subject to deportation, as provided for by the above Act.'

"Hence, this notice that you may prepare your defense and have an opportunity to appear either in person, or by counsel, and to cross examine the witnesses who may be presented by the prosecution and present witnesses on your behalf.

"Manila, March 1, 1913.

(Sgd.) "W. H. BISHOP, Prosecuting Attorney."

The foregoing notice was made a part of the petition. To the petition the defendants presented the following demurrer:

"First. That the court has no jurisdiction of the person of the respondent in that W. H. Bishop, prosecuting

attorney/ the agent of the Governor-General, the head of the Executive Department, is not an 'inferior person,' within the meaning of the law.

"Second. That there is a misjoinder of parties defendant in that neither W. H. Bishop, the agent, nor W. Cameron Forbes, the principal, Executive of the Philippine Islands, are named as defendants.

"Third. That the complaint does not state facts sufficient to constitute a cause of action in that:

"(a) The act which it is sought to enjoin and prohibit is discretionary.

"(b) The petitioner has another plain, speedy, and adequate remedy in the ordinary course of law—appearance and hearing before 'W. H. Bishop, prosecuting attorney,' and later on appeal before the Governor-General.

"(c) The commission or continuance of no act complained of will work an injustice to the petitioner, for a judicial hearing only is contemplated by 'W. H. Bishop, prosecuting attorney.

"(d) The respondent, 'prosecuting attorney of the city of Manila,' is not doing, or threatening to do, or about to do, or procuring or suffering to be done any act in violation of the petitioner's rights, because the 'prosecuting attorney of the city of Manila as prosecuting attorney, is involved in this action in no way, and because neither the 'prosecuting attorney of the city of Manila' nor 'W. H. Bishop' has or claims to have any power of deportation or expulsion of aliens."

Upon a consideration of the demurrer, the Honorable Charles S. Lobingier, judge, sustained the same and denied the writ prayed for, basing his conclusions upon Act No. 2113 of the Philippine Legislature.

From that decision the plaintiff appealed to this court, after having presented a motion for the reconsideration of the judgment of the lower court.

Said Act (No. 2113) provides as follows: "No. 2113.—An Act regulating the authority of the Governor-General of the Philippine Islands to deport, exclude, expel, or repatriate foreigners.

"Whereas it has been decided that the Governor-General of the Philippine Islands has authority to deport, expel, exclude, or repatriate foreigners, by due process of law;

"Whereas there is no law at present in the Philippine Islands which determines or defines such process of law;

"Whereas it is necessary and advisable for the individual security of all residents of these Islands clearly to fix said process of law: Now therefore

"By authority of the United States, be it enacted by the Philippine legislature, that:

"SECTION 1. Hereafter the Governor-General of the Philippine Islands may not deport, expel, exclude, or repatriate from said Islands any foreigners residing therein without prior investigation made by said Executive or his authorized agents, in which the person or persons whose deportation, expulsion, exclusion, or repatriation is contemplated, and their counsel and witnesses, shall be given a hearing. Such persons shall be informed of any charges which there may be against them, and shall be granted a period of time not less than three days to prepare their defense and shall be given an opportunity to cross-examine the witnesses for the prosecution: Provided, That this Act shall not be construed as authorizing the extranamiento, destierro, deportation, or any other form of expulsion from the Islands of Filipinos.

"SEC. 2. All Acts and legal provisions legally incompatible herewith are hereby repealed.

"Sec. 3. The public good requiring the speedy enactment of this bill, the same shall take effect on its passage, in accordance with section one of Act Numbered Nineteen hundred and forty-five of the Philippine Legislature.

"Enacted, February 1, 1912."

After a careful consideration of the facts alleged in the petition and the demurrer in their relation to said Act No. 2113, and the decision of the Supreme Court of the United States in the case of *W. Cameron Forbes vs. Chuoco Tiaco* (228 U. S., 549; 16 Phil. Rep., 534), and without a further discussion of the assignments of error presented by the appellant, we are of the opinion, and so decree, that the judgment of the lower court sustaining the demurrer should be and is hereby affirmed, with costs. So ordered.

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

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