

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANGEL ANG, DEFENDANT AND APPELLANT,

G.R. Nos. 11055 and 11056. February 29, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 25th of June, 1915, the Acting Attorney-General of the Philippine Islands presented a complaint in the Court of First Instance of the city of Manila, in each of the above cases, alleging that each of said defendants was a Chinese laborer and was found in the Philippine Islands on or about the 22d of June, 1915, without having in his possession and without having acquired the certificate of residence required by Act No. 702 of the Philippine Commission.

The complaint prayed that an order of arrest be issued for the said persons and that they be brought before the court that it might be determined if said Chinamen had a right to remain in the Philippine Islands, and that in case it be determined that they are Chinamen and are laborers and have not the required certificates, that they be deported.

On the same day (the 25th of June, 1915) a warrant of arrest was issued by the judge of the Court of First Instance In each of said cases for each of said Chinamen.

On the 28th of June, 1915, one of the deputy sheriffs of the city of Manila certified that on that date, each of the said defendants, without having been arrested, appeared in court and gave a bond for his liberty.

On the 3d of July, 1915, a notice was sent to each of the defendants, as well as to the Attorney-General, notifying each of them that said cases had been set down for trial, the first at 8 o'clock a. m. on the 12th of July, 1915, and the second at 10 o'clock a. m. on the same day.

On the same day notice was sent to the sureties on each of the bonds of the said defendants, which notice was received by said sureties on the 6th of July, 1915, which notice required the bondsmen to produce the body of each of the defendants in court at the time fixed for the trial of said case, as above indicated.

On the 12th of July, 1915, said cases were called for trial. Alva J. Hill, Assistant Attorney-General, was present and represented the plaintiff. Beaumont and Bamberger were present and represented each of the defendants. Neither of the defendants appeared. Hill asked for a judgment by default. Bamberger, representing the defendants, stated to the court that the bondsmen had done all within their power to secure the persons of the defendants and asked that more time be granted the bondsmen in order that they might bring the bodies of the defendants before the court. The court, upon hearing the request of Bamberger, denied the same and granted the petition of the fiscal.

Beaumont, immediately following the order of the court denying the said bondsmen additional time within which to present the bodies of the defendants, prayed the court to dismiss the action for the reason that the complaint was not in due form; that it had not been signed by the proper official. Beaumont offered to present a decision of

the Supreme Court in support of his motion.

Later, and on the 13th of July, 1915, the Honorable Simplicio del Rosario, judge, rendered the following decision in each of said cases, the only difference in the two decisions being the name of the respective defendants, in which each of said defendants was ordered deported:

"Yesterday having been set for the hearing of this case, a representative of the office of the Attorney-General and the defendant's attorney both appeared. The latter moved the court to suspend the proceedings for the reason that his client had gone to one of the northern provinces and up to date had not returned, notwithstanding that a telegram had been sent to him by his bondsman as soon as this latter was notified, on the 6th instant, of the date set for the hearing of the case.

"The representative of the Attorney-General opposed the suspension of the hearing.

"The record shows that the defendant was released only on June 23 last, under the bond given by him.

"Though he ought immediately to have consulted some practising attorney, if he was interested in defending himself against the charges preferred against him by the Government, he nevertheless absented himself and did not make the slightest inquiry to learn the approximate date when his case might be set for hearing and he ought to be back in this city.

"There is therefore no substantial reason for granting his counsel's petition for a suspension of the hearing and a postponement of the case until his return to this city, especially in view of the fact that it would be neither just nor lawful to suspend and postpone the hearing of cases in the courts for the mere convenience of litigants who are manifestly negligent in the defense of their own interests and who create confusion in the proper course of court proceedings.

"The suspension of the hearing being denied, defendant's counsel moved the court to dismiss the case, on the ground that the complaint or charge was subscribed by the Attorney-General and not by the official duly authorized for the purpose.

"As in other similar cases in which the attorney who is now counsel for the defendant represented the accused Chinese laborers this court has already decided that the Attorney-General is authorized by law to subscribe complaints or charges against Chinese laborers found within these Islands without the certificate of registration prescribed by Act No. 702 of the Philippine Commission, the motion to dismiss is denied.

"As it is charged that Angel Ang, being a Chinese laborer, was found in these Islands, on or about the 22d of last June, without the certificate of registration required by Act No. 702 of the Philippine Commission, and as he has not denied nor, still less, has he disproved that charge by any evidence, notwithstanding that it is incumbent upon the defendant to show that his case does not fall within the provisions of the aforementioned Act (U. S. vs. Sia Lam Han, 13 Off. Gaz., 190), the conclusion is inevitable that the said Angel Ang is a Chinese laborer and is not possessed of the certificate of residence required by the said Act and, as such, cannot remain in these Islands.

"It is ordered that Angel Ang and Estanislao Javier be deported.

"MANILA, P. I., July 13, 1915."

From that decision each of the defendants appealed to this court. In this court the appellant made the following assignments of error.

"The trial court erred—

"(1) In overruling the objection to the sufficiency and form of the complaints. (2) In refusing to dismiss the complaints as not authenticated as required by law. (3) In holding that the burden of proof is upon the

defendants to prove that they are not Chinese. (4) In ordering the deportation of the accused."

With reference to the first assignment of error, it may be said:

"(1) That each of the defendants voluntarily submitted himself to the jurisdiction of the court; (2) that they gave a bond for their appearance, at any time when the court might fix the cause for trial; and (3) that they made no objection whatever to the form or sufficiency of the complaint, until after the court had refused to transfer the trial from the day fixed to some later date.

In the case of *United States vs. De los Santos* (R. G. No. 10841, decided February 2, 1916, 33 Phil. Rep., 397) this court said, in discussing an analogous case:

"While it is true that the law requires the complaint, in a case like the present, to be signed by a particular person or class of persons, yet in the absence of a proper objection we are not inclined to allow an objection in the present case."

The action is not a criminal action. The procedure under Act No. 702 is a summary proceeding. The purpose is simply to ascertain whether or not the parties involved have a right to remain within the territory of the United States. The proceeding is in no proper sense a trial and sentence for a crime or an offense. It is simply an ascertainment by appropriate and lawful means of the facts whether the conditions exist upon which Congress has decided that an alien of a certain class may remain within the territory of the United States. The order of deportation is not a punishment, 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 enforcement of which the government, acting through its constitutional authority and through the proper department, has determined that his continuing to reside therein shall depend. He has not been deprived of life, liberty, or property, without due process of law. In the present case, as was said above, the defendants voluntarily appeared. They voluntarily submitted themselves to the jurisdiction of the court. They made no objection to the form or the sufficiency of the complaint until after the government had set the case down for trial, and not even then did they indicate that the complaint was not sufficient until after the court denied their motion for a transfer of the hearing of the cause. Following the decisions heretofore rendered by this court in the case of *United States vs. De los Santos* (supra) we are not inclined to hold the proceedings of the lower court null, by reason of the form of the complaint.

With reference to the other assignments of error, we are of the opinion that the lower court committed an error in sentencing the defendants to be deported in the present case. There was no proof whatever submitted in support of the allegations of the complaint. The attorney for the defendants was in court. While it is not necessarily an error for the court to refuse to transfer the hearing of a cause when the parties have been duly notified, yet it is certainly an error to render a judgment by default when the absent party is represented in court by his attorney. If the court was unwilling, under the circumstances, to grant a transfer of the hearing, it should at least have heard proof upon the facts alleged in the complaint.

For the reason that the lower court rendered a judgment without any proof whatever in support of the allegations of the complaint, the judgment is hereby revoked and the cause is hereby remanded to the court whence it came, in order that the defendants may appear, if they desire, at the time and place fixed for the trial of the cause and that a trial may be had upon the issues presented by the complaint, and without any finding as to costs. So ordered.

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

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