

[G.R. No. 536. January 23, 1902]

IN THE MATTER OF THE APPLICATION OF THOMAS TOYE PATTERSON FOR A WRIT OF HABEAS CORPUS.

D E C I S I O N

ARELLANO, C.J.:

The 15th day of October, 1901, Act 265 of the Legislative Commission of the Philippines was promulgated; about the 23d of November following a British subject, Thomas Toye Patterson, arrived at the port of Manila from abroad on board the steamer *Yuensang*. It appeared in the course of these proceedings that Patterson was a justice of the peace under the Australian Government, and had not lost his official character notwithstanding his residence of ten months in the United States, from whence he had gone to the British colony of Hongkong, and from the latter point proceeded to the port of Manila. Upon being arrested by the Collector of Customs of the Philippine Archipelago twenty-four hours after landing he sued out a writ of *habeas corpus*, the object of the present decision, to which Mr. W. Morgan Shuster, as such Collector of Customs of the Philippine Archipelago, made return that he had arrested said Patterson because he had reasonable grounds to believe him guilty of some or all of the offenses specified in said law.

Without any intention to prejudge the question, and acting solely upon its desire to permit the most ample discussion after its resolution of the 7th of December the court resolved to allow evidence to be taken in this case, and with this same object in view did not limit any proof whatever which the parties might desire to offer nor bar any allegation upon the question which it pleased them to raise concerning the exclusive competency of that administrative officer in the application of Act 265, the jurisdiction of this court to review a decision of such officer, the nature of the law, its true object and scope, and the authority of the Legislative Commission to pass such a law. After this exhaustive discussion of the case it is now for the court to render its decision.

Unquestionably every State has a fundamental right to its existence and development, as also to the integrity of its territory and the exclusive and peaceable possession of its dominions which it may guard and defend by all possible means against any attack. Upon this fundamental right Act 265 of the Legislative Commission of the Philippines is based. Upon this fundamental principle are based many other laws, among them those concerning immigration, emigration, commerce, and international inter-course. But contrary to the various allegations of the parties, Act 265 is not an emigration law, because it does not purport to regulate the conditions upon which the inhabitants of the territory may leave it; nor is it an immigration law, because it is not limited to the entrance into the territory of those who are foreigners, but refers "to persons coming from abroad, or those who are guilty of coming to the Philippines with a certain purpose," without distinction of nationality; neither is it a law of commerce or international communication, because of the precise and positive character of its object, which is no other than to prevent the entrance of those persons who "have aided, abetted, or instigated an insurrection in these Islands against the sovereignty of the United States therein, or against the Government herein established, or such persons as come here with any of these objects." Consequently the arguments adduced by the parties, with citations of authorities pro or con based upon the supposition that Act 265 is an immigration law, or part of the laws of the United States upon this subject, need not occupy the attention of the court. Nor is there merit in the question raised by the petitioner when he invokes the international treaty between England and the United States—that is to say, the law governing commerce and intercourse between the subjects of both nations—because, as we believe, it is a doctrine generally professed by virtue of that fundamental right to which we have referred that under no aspect of the case does this right of intercourse give rise to any obligation on the part of the State to admit foreigners under all circumstances into its territory. The international community, as Martens says, leaves States at liberty to fix the conditions under which foreigners should be allowed to enter their territory. These conditions may be more or less convenient to foreigners, but they are a legitimate manifestation of territorial power and not contrary to law. In the same way a State possesses the right to expel from its territory any foreigner who does not conform to the provisions of the local law. (Martens's Treatise on International Law, vol. 1, p. 381.) Superior to the law which protects personal liberty, and the agreements which exist between nations for their own interest and for the benefit of their respective subjects is the supreme and fundamental right of each State to self-preservation and the integrity of its dominion and its sovereignty. Therefore it is not strange that this right should be exercised in a sovereign manner by the executive power, to which is especially entrusted in the very nature of things the preservation of so essential a right without interference on

the part of the judicial power. If it can not be denied that under normal circumstances when foreigners are present in the country the sovereign power has the right to take all necessary precautions to prevent such foreigners from imperiling the public safety, and to apply repressive measures in case they should abuse the hospitality extended them, neither can we shut our eyes to the fact that there may be danger to personal liberty and international liberty if to the executive branch of the Government there should be conceded absolutely the power to order the expulsion of foreigners by means of summary and discretional proceedings; nevertheless, the greater part of modern laws, notwithstanding these objections, have sanctioned the maxim that the expulsion of foreigners is a political measure and that the executive power may expel without appeal any person whose presence tends to disturb the public peace. The privilege of foreigners to enter the territory of a State for the purpose of traveling through or remaining therein being recognized on principle, we must also recognize the right of the State under exceptional circumstances to limit this privilege upon the ground of public policy, and in all cases preserve the obligation of the foreigner to subject himself to the provisions of the local law concerning his entry into and his presence in the territory of each State.

The abnormal conditions prevailing in some provinces of this new territory of the United States, are known as a fact to the whole world. Act 265, as a political measure, seeks to prevent all classes of agitators, even citizens, from aggravating or extending the disturbance which still exists, much reduced, in certain parts of the Archipelago. Under these circumstances the Government exercising in a sovereign and efficacious manner this attribute of executive power has authorized an administrative officer to prevent the entrance into the country of persons from abroad whom he has reasonable grounds to believe guilty of having aided, abetted, or instigated insurrection, or whom he suspects of coming to the Philippines with that purpose. The power conferred in those terms upon this executive officer is discretional. Hence, his act is presumed to be based upon reasonable grounds for believing certain persons guilty of the acts or of an intention to commit the acts defined by the law. So the law must be understood in accordance with the principles established by the highest court of the nation in a decision rendered in the case of *Nishimura Ekiu vs. United States* (142 U.S.), in which Mr. Justice Gray uses the following language: "But, on the other hand, the final determination of those facts may be entrusted by Congress to executive officers; and in such a case, *as in all others*, in which a statute gives a discretionary power to an officer, to be exercised by him upon his own opinion of certain facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, unless *expressly* authorized by law to do so, is at liberty to examine or

controvert the sufficiency of the evidence on which he acted.”

Because the law has used the term “reasonable grounds” it is not to be inferred that this executive officer is required to show the reason for his grounds of belief to a court of justice; what the law desires to impress upon him is the idea that he is not to proceed arbitrarily but with discretion—that is, honestly, tactfully, and prudently.

The exhaustive argument which the court has heard is due to its urgent desire not to consider as a proper application of the law that which is not such in reality, and that there should not result a breach of constitutional or international law; but nothing of this kind has been demonstrated in this ample and wide discussion and argument.

To hold that because Thomas Toye Patterson succeeded in landing when the law forbids his landing the State thereby lost its right to reembark him and deport him from the territory would be similar to saying that in case a quarantine law has prohibited the landing of a person suffering from a contagious disease should such person succeed in landing the State has lost all right of deporting him and freeing itself from the danger of contagion.

It has been alleged that the Legislative Commission has no power to pass such a law; but the law has been passed, and against its operation there is nothing to oppose. We know of no law violated or right infringed by the existence of a law which advances the welfare of the people, the supreme law of all affairs of life.

We therefore deny the application of Thomas Toye Patterson for discharge, and he will be remanded to the custody of Mr. W. Morgan Shuster, Collector of Customs of the Philippine Archipelago, with the costs to Patterson, and it is so ordered.

Torres and Mapa, JJ., concur.

Ladd, J., did not sit in this case.

CONCURRING

WILLARD, J.:

Upon the return to the writ in this case the petitioner offered to prove that the Collector did

not have reasonable grounds for believing that the former came within the terms of the law in question. The court held that the decision of the Collector on this point was final and could not be reviewed by any judicial tribunal. The evidence was accordingly rejected. In this ruling I did not concur.

I concede, so far as this petitioner is concerned, that the Commission had the power to pass a law making the decision of the Collector final. The only question is, Has it done so? The law does not say "if the Collector believes," "if he is of the opinion," "if he has evidence satisfactory to himself," nor does it use any similar phrase. Neither does it say in so many words that his decision shall be final as does the act of Congress of 1894 relied upon by the Attorney-General.

To hold that his decision is final is to strike from the law the words "reasonable grounds" This is contrary to the rule of construction, which has been carried into the Code of Civil Procedure (art. 287), that effect must be given, if possible, to all the particulars of a statute.

When the Commission said that the Collector must have reasonable grounds on which to act they meant that he must have grounds which were reasonable in fact. Whether they were in fact reasonable or not was not to be determined by himself. If the Commission had so intended it would have been very easy to have used language which clearly expressed that intention. To hold that the Commission by the use of these words intended simply to advise the collectors throughout the Islands to act reasonably in the exercise of their powers under the act is to impute to it the doing of a vain and useless thing. Every official is presumed to act reasonably and it is not necessary in every law to advise him to do so. Moreover, under this construction the Commission virtually says to the collectors, "You must act on reasonable grounds, but if you do not no one can interfere with you."

Bankrupt and insolvent laws in the United States generally provide that a preference shall be void if the creditor has reasonable grounds to believe that his debtor is insolvent. It has of course always been held that the courts must decide whether or not the grounds were reasonable. So, in actions for malicious prosecution, the defendant prevails if he had probable cause to believe that the plaintiff had committed the offense on account of which he procured the arrest. The courts in this class of cases always pass upon this question of probable cause.

The construction which I think should be given to the law would not interfere with its operation. It provides that until there is an opportunity to deport the person detained he may be confined. The persons charged with his confinement can, while a petition for a writ

of *habeas corpus* is being heard, easily prevent the accomplishment of any wrongful purpose which he may have had in coming to the Islands. Neither does this construction interfere with the rule that the courts can not control the discretionary acts of an administrative officer. The whole question here is whether the act is or is not discretionary.

The majority of the court having taken the contrary view, however, that became the law of the case. Upon the evidence which was received and upon which the case was submitted I think that the prisoner was properly remanded. To the opinion of the Chief Justice I desire to add nothing except on the subject of the landing. The evidence showed that passengers were not allowed to leave the ship at their will after receiving a pass, but were required to go from the ship to the shore, with their baggage, in a certain launch. The baggage was not examined by the customs official until it reached the shore. It seems very clear to me that while the passengers were in this launch they and their baggage were still under the jurisdiction of the Collector, and that on the arrival of the launch at the shore he could have detained any passenger coming within the provision of the law in question. In this particular case the petitioner departed from the ship in this launch, but before it reached the landing he transferred himself from it into another craft which was brought alongside by one of his friends, and thus reached the shore. He left the launch in this way without the knowledge or consent of the Collector or any of his deputies, and having done so the mere fact that he succeeded in getting his foot on shore did not deprive the Collector of the right to detain him when on the next day he presented himself for his baggage, which all the time remained in the custody of the Collector. Where a person not entitled to land gets on shore stealthily or without the knowledge of the Collector, from the very nature of the case the right of the latter to detain him must continue for at least a reasonable time thereafter. To hold otherwise would give to the law what seems to be an absurd construction. The Commission would in effect say to the petitioner and everyone else: The Collector has the right to prevent your landing, but if you can in any way get to the shore without his knowledge you can stay there.

DISSENTING

COOPER, J.:

The application for a writ of *habeas corpus* in this case is based upon the acts of the Collector of the Customs of the Philippine Islands in the detention of the prisoner for the

purpose of deporting him to Hongkong,

Under the provisions of Act 265 of the United States Philippine Commission, entitled "An act .requiring persons whom the Collector of Customs has reasonable grounds for believing guilty of aiding insurrection seeking to land in the Philippines to take an oath of allegiance and prescribing punishment for the violation thereof," any person whom the Collector of Customs has reasonable grounds to believe guilty of having aided and abetted or incited an insurrection in these Islands against the authority and sovereignty of the United States or against the government constituted by the United States herein, or of coming to these Islands for that purpose, and who, coming from a foreign country, seeks to land at any port, shall not be permitted to land until after he shall take before the Collector of Customs or his authorized deputy the oath prescribed by the act.

On the 24th day of November the petitioner, Thomas Toye Patterson, a British subject, arrived at the port of Manila, from Hongkong, by the steamer *Yuensang*. Twenty-four hours after landing he, having been required by the Collector of Customs to take the prescribed oath and having refused to comply on account of his objections to certain parts of the oath, was arrested by the Collector of Customs and is now held by him for deportation.

It may be admitted that it is not within the province of the judiciary by a judgment to order that foreigners who have never been naturalized or acquired any residence in the country shall be permitted to enter in opposition to the lawful measures of the legislative and executive branches of the Government; that the question in such cases is political in its nature and belongs exclusively to the legislative or executive branches of the Government; that as to such persons the decision of an executive or administrative officer, acting within powers expressly conferred, is due process of law, and that in the absence of express authority such decision can not be reExamined by any tribunal. Still, such officer must act within the scope of his authority, otherwise he is without jurisdiction, his decision is a nullity, and the courts will relieve a person by *habeas corpus* from the unlawful imprisonment under such void proceedings.

The testimony of Ralph C. Dickey, Inspector of Immigration, is that he is the Inspector of Immigration for the port of Manila, that his duty as such officer is to conduct the examination of passengers on incoming steamers as to their qualifications to land under the act in question and to reject or pass all passengers on board of such vessels; that on the 24th day of November, 1901, in the discharge of his duty and for the purpose of making such examination he went aboard the steamer *Yuensang* when that vessel came to the

harbor and conducted the examination in person; that among those examined by him was the petitioner, and as a result of such examination he decided to pass him and gave him a permit which is in form as follows:

“UNITED STATES CUSTOM-HOUSE, MANILA, P. I.,

“IMMIGRATION OFFICE.

“Guards will permit bearer to leave
this ship.

“(Dated)

(Signed)

“RALPH C. DICKEY,

*“Inspector of
Immigration.*

“Guards will take up this card when bearer leaves ship and return same into
Immigration Office.”

This witness states that under the regulations for such examination the passenger before leaving the ship gives this pass to the inspector or to the inspector’s assistant at the gangway; that such examinations are made and concluded on board the ship, and that it is not the duty of the inspector to stay there and see passengers leave the ship; that passengers leave shipboard on the Travelers’ Transport launch, a company bonded to transport passengers arriving at this harbor from incoming ships to the land.

By reference to Act 219 of the Philippine Commission it will be seen that the Travelers’ Transport Company was not in the service of the Collector of Customs nor in any way in the service of the Government. It was a company selected by the Collector of Customs, after bids were received, to land passengers and their baggage from incoming ships. By the provisions of section 3 it is expressly stated that nothing therein contained shall prevent the landing of passengers and baggage gratuitously, the intent of this act being to limit “the business of landing passengers and baggage to the persons selected in accordance with this act.”

The testimony of the petitioner shows that after the ship *Yuensang* arrived, an examination of those aboard was made by the Inspector of Immigration; that petitioner answered the required questions and took the oath as to his baggage; that he was passed by the Inspector and a permit was issued to him, and that this permit was taken up at the gangway of the

ship by the assistant inspector; that with the other passengers of the ship he left for land on board the Travelers' Transport launch, taking with him a part of his baggage; that before this launch reached the shore a friend came alongside and took him aboard his boat, from which boat he landed in Manila. He testifies that he had no intention whatever of defeating any law by going in the boat with his friend; that he knew no order nor regulation to the contrary; that he simply went in the boat with his friend as a matter of courtesy and friendship. There is no evidence whatever in the case tending in any degree to show that the petitioner left the launch stealthily; on the contrary, the testimony is that he was subjected to and passed the only examination required by the rules and regulations of the Inspector of Customs as to his qualifications to land.

The petitioner was arrested twenty-four hours after landing, and the question arises whether the Collector of Customs is acting within his jurisdiction in detaining and deporting him to Hongkong.

Whether the case, in view of the examination made by the inspector on board the Yuemang, may be considered as one in which a decision by a competent authority has been duly made upon inquiry and investigation, and a decision reached possessing qualities of finality in the absence of provisions for opening up and reviewing the proceedings, and by which decision the jurisdiction of the officer was exhausted in the particular case, or whether it may be regarded as an attempt made by the Collector of Customs to exercise jurisdiction in a case not provided for by the act in question, which is for preventing the landing and clearly does not extend to and embrace a case in which the landing

has been fully and effectually made, in either case the Collector of Customs is, in my opinion, acting without jurisdiction, and the wrongful detention under such void proceedings should be relieved against by this court.

It is not contended by the Attorney-General that the immigration regulations for the Philippine Islands, made by the Secretary of War on June 6, 1899, in any way affects this case. Article 4 of these regulations is cited to show that a temporary removal from the vessel should not be regarded as a landing.

It is expressly provided in this article "that whenever it shall be necessary in making the examination of immigrants to temporarily remove them from the vessel upon which they arrive to a desirable place provided for the examination, such immigrants shall not be regarded as having landed so long as they are undergoing the examination and in charge of

the officer whose duty it is to make such examination, and such a removal shall not be considered a landing during the pendency of any question relating to such examination or while awaiting their return as provided by law." It is contended that in analogy to this regulation the petitioner's coming ashore should not be regarded as a landing. It seems more plausible that a contrary conclusion should be drawn from this provision, as clearly showing the construction of what is regarded as a landing, and that the War Department in considering the effects of a landing has deemed it proper to define what facts shall constitute a landing. The inference is that in the absence of such regulation the landing of an immigrant or passenger not in charge of an officer whose duty it is to make such examination would be considered as a landing and deprive the officer of his power to make the examination.

As shown by the testimony above referred to it is clear that the examination by the inspector on board the ship was complete and no further examination was contemplated, and that the petitioner was in no way in charge of the inspector after the issuance of the permit to him.

The power confided by the Commission to the Collector of Customs is a limited one and of a very high and delicate nature. It is to be exercised upon sudden emergency. The Collector has no time for scrupulously weighing the evidence upon which he is to exercise the power. It is of a nature which does not require strict technical proof. An investigation according to the course of judicial proceedings is wholly impracticable. Further, the disclosure of the evidence might reveal important secrets of state which for public interest should be kept in secrecy.

According to the view of the majority of the court, in which, regarding the act as in the nature of an immigration law, I concur, the act gives a discretionary power to be exercised by the Collector upon his own opinion of certain facts, and constitutes him the sole and exclusive judge of the existence of those facts. The exigency necessarily results in the nature of the power itself. This view furnishes a strong reason why courts should scrutinize closely the exercise of this extraordinary power, and confine the officer to the exact limits set by statute upon his action. The act is for the purpose of preventing a landing of objectionable persons and not for the purpose of bringing to trial suspicious persons who have already landed. If those who have fairly landed or who have passed examination as to their qualifications to land, and have been adjudged by proper authority as possessing the qualifications, are twenty-four hours after such examination and landing subject to arrest and deportation, at what period of time are they to be secure from the exercise over them of this extraordinary power? The limit in my opinion is the time when they have passed the

examination and have been discharged or have been permitted to leave the ship and are on land not in charge of the officer whose duty it is to make such examination. This rule is easy of application. The rule adopted by the majority of the court is uncertain and dangerous in its application.

I do not concur in the opinion of the court.

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