7 Phil. 164

[G.R. No. 3495. December 07, 1906]

JAMES J. KAFFERTY, COLLECTOR OF CUSTOMS FOR THE PORT OF CEBU, PHILIPPINE ISLANDS, PLAINTIFF, M. THE JUDGE OF THE COURT OF FIRST INSTANCE FOR THE PROVINCE OF CEBU AND JUAN CO AND HIS CURATOR AD LITEM, MARTIN M. LEVERING, DEFENDANTS.

D E C I S I O N

WILLARD, J.:

On the 17th of January, 1905, a Chinese boy, under age, named Juan Ocaba, arrived at the port of Cebu and was refused admission to the Islands by the plaintiff herein, who was then collector of the port of Cebu. Ocaba appealed from this order to the Insular Collector and was allowed to land and remain on shore during the pendency of the appeal on furnishing a bond of $1,000, money of the United States. The order of the collector of Cebu was affirmed by the Insular Collector on the 10th of February, 1905. On the 27th of February, 1905, the Court of First Instance of Cebu, in proceedings had therein for the adoption of Juan Ocaba by one Co Quip Jat, entered an order declaring that Juan Ocaba, under the name of Juan Co, was the legally adopted child of said Co Quip Jat. After this adoption a petition was made to the plaintiff as such collector for an order to allow Juan Co to remain in the Islands. This application was denied. On an appeal taken to the Insular Collector, the order of the collector of the port of Cebu was affirmed; and on an appeal taken to the Secretary of Finance and Justice it was again affirmed.

The eighth and thirteenth paragraphs of the amended complaint are as follows:

> "Eighth. That on or about the 28th day of February, 1905, the said Juan Co (formerly Juan Ocaba), as plaintiff, applied to the Court of First Instance of Cebu for a preliminary injunction against said collector of customs of the port of Cebu, prohibiting said collector of customs from deporting said plaintiff, Juan Co (formerly Juan Ocaba), and the said judge of the Court of First Instance for the

Province of Cebu issued the preliminary injunction as prayed for, prohibiting the collector of customs for said port of Cebu from deporting the said Juan Ocaba (Juan Co) from the Province of Cebu during the pendency of said suit in said court.

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"Thirteenth. That thereafter, and until April 14, 1906, the said preliminary injunction continued in force and effect, so that the said collector of customs for the port of Cebu could not, without violating said injunction, carry into effect the said order of deportation; and on or about said 14th day of April, 1906, the said Court of First Instance of Cebu rendered a so-called judgment by default against the collector of customs for the port of Cebu upon the ground that no answer had been tiled in said injunction case, and permanently enjoined the said collector of customs from deporting the said Juan Ocaba (Juan Co) from the Province of Cebu; that said judgment by default was rendered by the court without the knowledge or acquiescence of the collector of customs of the port of Cebu, and no notice thereof was received until long after the injunction was made permanent, and no copy of said judgment or order of court was ever served upon the said collector of customs for the port of Cebu." A part of the prayer of the amended complaint is as follows:

"1. That judgment be rendered in favor of the plaintiff, including an order commanding the defendant, the judge of the Court of First Instance for the Province of Cebu, absolutely to desist and refrain from further proceedings in the actions in which said order of adoption and said injunction were issued.

"2. That the action of the said judge of the Court of First Instance of Cebu in the issuance of said order of adoption and said injunctions be declared null and void and of no force or effect."

To this complaint the defendants have demurred and the case is now before us for resolution of the questions raised by the demurrer. We think it appears from the complaint that in an ordinary civil action pending in the Court of First Instance of Cebu in which Juan Co was plaintiff and this plaintiff, as collector of the port of Cebu, was defendant, a final judgment was entered perpetually enjoining this plaintiff, the defendant therein, from deporting Juan Co from the Islands. No appeal was ever taken from that final judgment and

no application has been made to set it aside on the ground that it was entered by fraud, accident, or mistake.

The plaintiff herein asks that it be declared void on the ground that the court had no jurisdiction of the action. That it had jurisdiction of the parties to the action is very clear. The only question is whether it had jurisdiction of the subject-matter of the action. That courts of justice may in some cases take jurisdiction of a case involving the right of a Chinese person to remain in the Islands, we think is settled by the decisions of the Supreme Court of the United States. In the Japanese Immigrant case (189 U. S., 86) the court said, at page 100:

> "But this court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in 'due process of law' as understood at the time of the adoption of the Constitution. One of these principles is that no person shall be deprived of his liberty without opportunity, at some time, to be heard, before such officers, in respect of the matters upon which that liberty depends— not necessarily an opportunity upon a regular, set occasion, and according to the forms of judicial procedure, but one that will secure the prompt, vigorous action contemplated by Congress, and at the same time be appropriate to the nature of the case upon which such officers are required to act. Therefore, it is not competent for the Secretary of the Treasury or any executive officer, at any time within the year limited by the statute, arbitrarily to cause an alien, who has entered the country, and has become subject in all respects to its jurisdiction, and a part of its population, although alleged to be illegally here, to be taken into custody and deported without giving him all opportunity to be heard upon the questions involving his right to be and remain in the United States. No such arbitrary power can exist where the principles involved in due process of law are recognized.
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> "The words here used do not require an interpretation which would invest executive or administrative officers with Hie absolute, arbitrary power implied in the contention of the appellant."

In the case of the United States vs. Ju Toy (198 U. S., 253), in each of the three questions submitted to the Supreme Court by the circuit court of appeals, there is found a statement substantially as follows:

> "And does not allege nor show in any other way unlawful action or abuse of their discretion or powers by the immigration officers who excluded him."

In that case the court said that—

> "We assume in what we have to say, as the questions assume, that no abuse of authority of any kind is alleged."

If the immigration officers refuse to give the person interested any hearing at all upon his right to enter, or commit any other abuse of their powers, the courts of justice have the right to intervene. In this particular case we have a final judgment entered in a case in which the court entering it had jurisdiction of the parties and might have had jurisdiction of the subject-matter. The plaintiff in this case asks to have the judgment set aside. It is his duty to show affirmatively that that court had no jurisdiction of the subject-matter. This has not been done. It nowhere appears in the amended complaint in this action what the grounds for the complaint in the action in the Court of First Instance were. If that action was founded upon an abuse of discretion or of their powers on the part of the immigration officers, the court had jurisdiction of it, and its judgment, not appealed*from, is final. The amended complaint in this action is therefore not sufficient. Whether it Avould be sufficient if it showed that the complaint in that action was based upon other grounds, we do not now decide.

There is another ground, also, upon which the demurrer should be sustained. This is an action of prohibition. Upon the face of the amended complaint, both the judgment entered in the adoption proceedings and the judgment entered in the ordinary action were final. There is no allegation in the amended complaint that that court is threatening to or proposes to take any further action in either one of these proceedings. Without such an allegation, prohibition will not lie.

The demurrer to the amended complaint is sustained, and the plaintiff is allowed ten days within which to amend his complaint.

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

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