

5 Phil. 65

[G.R. No. 2781. September 28, 1905]

VICTOR LOPEZ, PLAINTIFF, VS. W. MORGAN SHUSTER, COLLECTOR OF CUSTOMS, AND THE BOARD OF PHILIPPINE MARINE EXAMINEES, DEFENDANTS.

D E C I S I O N

CARSON, J.:

The defendants demur to the application filed in this cause on the ground that the facts set out therein do not constitute a cause of action.

The plaintiff avers that the defendants, on or about the 31st day of October, 1904, revoked his license as chief engineer on Philippine coastwise vessels, and unlawfully refused and continue to refuse to permit him to secure employment as chief engineer on such vessels.

Act No. 780 of the Philippine Commission prescribes the conditions under which licenses for engineers on coastwise vessels may be granted, and section 7 of that act is as follows:

“On and after August first, nineteen hundred and three, every applicant for license as master, mate, patron, or engineer of a Philippine coastwise vessel shall be a citizen of the United States or of the Philippine Islands: *Provided, however,* That any citizen or subject of any other country who may be acting as master, mate, patron, or engineer of any Philippine coastwise vessel at the time of the passage of this act may, upon application to the Insular Collector of Customs, be granted a certificate of service which shall authorize him to continue to act in the Philippine coastwise

trade as such master, mate, patron, or engineer, as the case may be, upon his making proper showing to the board hereinbefore created, either by the presentation of a properly authenticated license from some other recognized maritime country satisfactory to the board, or by such other evidence of competency and good character as the board in its discretion may deem sufficient: *And provided further*, That he shall have seen at least two years' service in the coastwise trade of these Islands under the American flag and that he shall take the following oath:

" 'I hereby solemnly swear that I acknowledge the sovereignty and authority of the United States in the Philippine Islands, and of the government constituted by the United States herein, and that while in the Islands I will support and maintain the same, and that I will not at any time hereafter while in these Islands or while serving under this license at any place aid, abet, or incite resistance to the authority of the United States or of the government established by the United States in these Islands, and that I take this oath voluntarily, without any mental reservation whatsoever. So help me God.'"

The facts set up in the complaint affirmatively establish that the complainant is not a citizen of the United States or of the Philippine Islands, and it does not affirmatively appear that he has seen two years' service in the coastwise trade of these Islands under the American flag, nor that he has made a proper showing to the board created by said act, either by the presentation of a properly authenticated license from some other recognized maritime country satisfactory to the board or such other evidence of competency and good character as the board, in its discretion, deemed sufficient.

The demurrer should be, and is hereby, sustained, and unless the complaint is amended within ten days from receipt of notice of this decision, the complaint will be dismissed. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, and Willard, JJ., concur.

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