2 Phil. 630

[G.R. No. 1455. October 29, 1903]

IN THE MATTER OF THE APPLICATION OF BANK STANLEY ALLEN FOR A WRIT OF HABEAS CORPUS.

D E C I S I O N

MCDONOUGH, J.:

The petitioner, Frank Stanley Allen, who is an alien, claims that he is unlawfully detained and restrained of his liberty in Manila, P. I., by W. Morgan Shuster, as Collector of Customs for the Philippine Archipelago, who threatens to deport the petitioner from the Islands for the reason that said Collector claims that the petitioner is a prohibited alien contract laborer whose importation is forbidden by the act of Congress approved March 3, 1903, entitled "An act to regulate the immigration of aliens into the United States."

The question as to whether the petitioner is or is not within the class of persons excluded by that act is not raised in this stage of the proceedings, and so the only question to be determined is this: Has the Collector of Customs for the Philippine Archipelago lawful authority to execute, or cause to be executed, so much of said act of Congress as provides for the detention and deportation of prohibited aliens?

The petitioner insists that, inasmuch as by said act of Congress it is provided that for the "purpose of this act the words 'United States' as used in the title as well as in the various sections of this act," shall be construed to mean the United States and any waters, territory, or other place now subject to the jurisdiction thereof; and that, as by section 22 of the act the Commissioner-General of Immigration, under the supervision and direction of the Secretary of the Treasury of the United States, is charged with the administration of all laws relating to the immigration of aliens into the United States, and is required to establish rules and regulations relating thereto, the .said Collector of Customs is without jurisdiction to act in the premises, as he has not been authorized to execute the provisions of the law by the Secretary of the Treasury, or by the Commissioner-General of Immigration, or by act of

Congress.

Attention is also called by the petitioner to section 24 of said act of Congress, which provides for the appointment of immigration inspectors by the Secretary of the Treasury upon the recommendation of the Commissioner-General of Immigration, in accordance with the civil-service rules and regulations in the act of June 16, 1883.

There is very little that is new legislation in this act of Congress, approved March 3, 1903. In fact, almost all the provisions contained in it were in force prior to that date, not only in the United States but also in these Islands.

The principal changes made in the law by this act consist of an enlargement of the prohibited classes so as to add to the former list persons who have been insane within five years, those who had two or more attacks of insanity, anarchists, and those who believe in or advocate the overthrow by force or violence of the Government of the United States, or of all government, or all forms of law, or in the assassination of public officials.

In fact, with few exceptions, this act is a compilation and reenactment of the immigration laws passed by Congress from the year 1875 down to the date of the passage of the act.

And so, to properly determine the intention of Congress, and to interpret the effect of the application of the section of this law extending its provisions to these Islands, it is necessary to look into the laws, rules, and regulations in force here before the approval of this law, and to ascertain by what authorities these were administered in the Philippine Islands.

It may be well, however, first to state that the authority of the President of the United States, as Commander in Chief of the Army and Navy, to govern conquered territory, was limited only by the law and usages of war until Congress took action. It was said in the case of New Orleans
vs. New York Mail Steamship Company (20 Wall., 387-394) that "the conquering power has the right to displace the preexisting authority and to assume to such extent as may seem proper the exercise by itself of all the powers and functions of government. It may appoint all the necessary officers and clothe them with designated powers, larger or smaller, according to its pleasure. It may do anything necessary to strengthen itself and weaken the enemy."

This right to administer the government, from the necessities of the case, continued in the military commander, after the ratification of the treaty of peace with Spain and until

Congress shall provide otherwise. (Dooly *vs.* United States, 182 U. S., 222.) By that treaty these Islands became territory appurtenant to the United States, but not an integral part of the United States. The mere annexation has not the effect of incorporating the Islands into the United States.

So the civil government of the United States can not extend immediately, and of its own force, over territory acquired by war, even when possession is confirmed by treaty, but such territory must necessarily, in the first instance, be governed by the military power under the control of the President as Commander in Chief, until civil government is put in operation by the appropriate political department, at such time and in such degree as the department may determine. (Downes *vs.* Bidwell, 182 U. S., 244.)

The President speaks and acts through the heads of the Departments in reference to the business committed to them. (Wilcox *vs.* Jackson, 13 Pet., U. S., 498.)

Pursuant to this authority, on the 14th day of April, 1899, the War Department issued what is known as circular 'No. 13, signed by the Acting Secretary of War, in which it was stated that "the law and regulations governing immigration to the United States are hereby declared to be in effect in the territory under government of the military forces of the United States, and *collectors of customs* are directed to enforce said laws and regulations *until the establishment* of immigration stations in the said territory. * * *"

On the 6th day of June, 1899, the Acting Secretary of War issued an order in which he stated that, in accordance with the provisions of circular No. 13, he proclaimed, published, and applied to the Philippine Islands immigration regulations for the information and guidance of all concerned.

These regulations briefly required the enforcement of all the acts of Congress relating to immigration, passed prior to June 6, 1899, and the collectors of customs of the Islands were charged with the execution of the immigration and labor laws; with the removal and examination of immigrants; with the keeping of a record of the prohibited classes; provision was made for private examinations and for the presence of counsel; for appeals from the decisions of inspectors or collectors of customs to the Collector of Customs for the Archipelago; for the expense of keeping prohibited persons; for the deportation of rejected immigrants; for the listing of immigrants by ship's masters, and for penalties for failure to deliver lists to the Collector.

Article III of these regulations is as follows:

> "Collectors of customs are charged, within their respective districts, with the execution of the laws pertaining to immigration, *and all importation of laborers under contract or agreement to perform labor in the Philippine Islands.* They will employ all customs, immigration, and other officers assigned to them for duty in the enforcement of the immigration acts; and all such officers are hereby designated and authorized to act as *immigration officers*."

Pursuant to the requirements of these regulations and the authority vested in him by them, ,and by circular No. 13, the Collector of Customs for the Philippine Archipelago, on December 31, 1902, issued circular No. 74, by which he notified all customs collectors that those regulations were to be enforced, as well as the acts of Congress relating to immigration, copies of- which were sent out with the instructions of the Insular Collector of Customs.

Among the laws enumerated and sent by him, which were to be enforced in these Islands by the collectors of customs, he specified the following: The acts approved March 3, 1875; August 3, 1882; June 26, 1884; February 26, 1885; chapter 551 of Laws of 1891; chapters 114 and 206, Laws of 1893; and the act approved June 30, 1896, which changed the title of the Superintendent of Immigration to that of Commissioner-General of Immigration, and vested in him, under the Secretary of the Treasury, the administration of the alien contract-labor laws, and the Chinese exclusion act approved June 6, 1900.

So that, at the very time Congress passed the immigration law, on March 3, 1903, all these existing laws were enforced here, not under the supervision and direction of the Secretary of the Treasury and the Commissioner-General of Immigration, but by the collectors of customs, their inspectors and immigration officers, with the right of appeal to the Insular Collector, under the supervision and direction of the Secretary of War and the Commissioners of the Philippine Islands.

The Chinese exclusion act was also administered and enforced by the collectors of customs of the Islands and their immigration officers, and it continues to be so enforced by them, although by the act of Congress approved June 6, 1900, the Commissioner-General of Immigration is charged with the enforcement of that law, under the supervision of the Secretary of the Treasury, and although by the provisions of the act of Congress approved April 29, 1902, the Chinese exclusion law is made applicable to the Philippine Islands; and yet the Secretary of the Treasury and the Commissioner-General of Immigration seem to

have acquiesced in such administration of that law by the collectors of customs of the Islands and their officials, for no other immigration inspectors have been appointed by them, or either of them, to serve in the Philippines.

In addition to the power and authority conferred on collectors of customs by the Secretary of War, to administer the immigration laws, the Philippine Commission, in the Customs Administrative Act, passed February 6, 1902, by section 3, subdivision 9, of chapter 1, made it the duty of the *customs service to execute the laws relating to immigration;* and by section 19, subdivision 1, of chapter 2 of said act, made it the duty of the Insular Collector to make and promulgate general rules and regulations not inconsistent with the law, and subject to the approval of the Secretary of Finance and Justice, directing the manner of executing the customs law and laws relating to commerce and *immigration*. The Commission also, by section 16 of Act No. 367, made provision for the appointment of one chief of division of class 5, "who shall be in charge of the *immigration division*, for which the following employees are authorized: One clerk of class 7; *one immigration inspector* of class 8; two immigration inspectors of class 9; one Chinese interpreter of Class D."

From the time the United States forces first took possession of these Islands down to the present time, the President of the United States appears to have exercised such powers as he possessed and as it was found necessary to exercise, as Commander in Chief of the Army and Navy, in the Islands, through the War Department and through the Secretary of War, and not through the Secretary of the Treasury.

In the instructions of the President to the Philippine Commission (see Off. Gaz. Jan. 1, 1903, p. 29)[1] transmitted by the Secretary of War April 7, 1900, he stated that "the transfer of authority from the military commanders to the civil officers will be gradual and will occupy a considerable time. * * * The Commission will, therefore, report to the *Secretary of War, and all their acts will be subject to his approval and control."* "The authority to exercise," he said, "subject to my approval, through tne Secretary of War, that part of the power of government in the Philippine Islands which is of a legislative nature, is to be transferred from the Military Governor of the Islands to this Commission to be thereafter exercised' by them * * * until the establishment of the civil central government for the Islands. * * *"

By the act of Congress approved July 1, 1902, the action of the President in creating the Philippine Commission to exercise the powers of government to the extent and in the manner and form and subject to the regulation and control set forth in the instructions of the President to the Commission, and the action of the Commission, on September 6, 1901,

in organizing the Departments of Finance and Justice (including a Bureau of Immigration), of the Interior, of Commerce and Police, and of Education, was approved, ratified, and confirmed, and it was enacted that *"until otherwise provided by law, the said Islands shall continue to be governed as thereby and herein provided."*

Section 2 of said act of Congress ratified and confirmed the action of the President theretofore taken by virtue of the authority vested in him as Commander in Chief of the Army and Navy, as set forth in his order of July 12, 1898, whereby a tariff of duties and taxes, as set forth by said order, was levied and collected at all ports in the Philippine Islands, together with subsequent amendments of said order; and also the action of the authorities of the Philippine Islands, taken in accordance with the provisions of said order.

Section 3 of said act authorized the President during such time as and whenever the sovereignty and authority of the United States encountered armed resistance in the Philippine Islands, until otherwise provided by Congress, to continue to regulate and control *commercial intercourse* with said Islands by such rules and Regulations as he in his discretion deemed most conducive to the public interest and the general welfare.

By section 86 of said act it is provided that all laws passed by the Government of the Philippine Islands shall be reported to Congress, which reserved the power to annul the same; and the Commission is directed to make annual report of all its receipts and expenditures to the Secretary of War.

By section 87 of said act it is provided that the Division of Ins-ular Affairs of the War Department, organized by the Secretary of War, is continued until otherwise provided. The business assigned to said Bureau embraced *all matters pertaining to civil government* in the insular possessions of the United States, subject to the jurisdiction of the War Department, and the Secretary of War is authorized to detail an officer of the Army whom he may consider specially well qualified to act under the authority of the Secretary of War as Chief of said Bureau. Much weight is also to be given to what is known as the Spooner amendment of March 2, 1901, providing that "all military, civil, and judicial powers necessary to govern the Philippine Islands * * * shall, until otherwise provided by Congress, be vested in such person and persons and shall be exercised in such manner as the President of the United States shall direct, for the establishment of civil government and for maintaining and protecting the inhabitants of said Islands in the free enjoyment of their liberty, property, and religion."

It thus appeals that Congress expressly authorized the President to control the commercial intercourse with the Islands by such rules as he might deem most conducive to the public interests; that that body ratified his action in creating the Commission, authorizing it to exercise powers of government to the extent and in the manner and form and subject to the control set forth in his instructions, which instructions made all their acts subject to the approval of the Secretary of War; that Congress ratified the acts of the Commission in organizing all of its departments of government, including the Immigration Bureau; that Congress also required the Commission to make report annually of all” its receipts and expenditures, not to the Secretary of the Treasury but to the Secretary of War; and finally made provision for the establishment of a Bureau of Insular Affairs in the War Department, the business of which embraces *all matters pertaining to civil government in the insular possessions of the United States,* subject to the jurisdiction of the War Department; the Chief of which Bureau was to be appointed by the Secretary of War and under his authority.

It is difficult, if not impossible, to consider the foregoing action taken by the President and the Secretary of War, to read the acts of Congress and the acts of the Philippine Commission referred to above, as well as the orders, rules, regulations, and circulars relating to immigration, without reaching the conclusion that the whole administration of affairs in these Islands, vested in the Executive, had been exercised down to March 3, 1903, by the President personally or through the War Department and the Secretary of War, or the Commission. Congress was, of course, aware of this exercise of power and authority when the immigration laws were revised on that date, and was aware that these immigration laws had been executed in the Islands under the authority and supervision of the Secretary of War, the Philippine Commission, and that immigration inspectors had been appointed pursuant to such authority.

Did Congress, then, by reenacting the former provisions of law providing for the enforcement of these immigration laws *in the United States* by the Commissioner-General of Immigration, under the supervision of the Secretary of the Treasury, by providing how immigration inspectors should be thereafter appointed and by making the act applicable to these Islands, intend, *ipso facto*, and at that very instant, to transfer the control and supervision of immigration to the Treasury Department and authorize said Commissioner-General to also appoint immigration inspectors for the Philippines, and to immediately annul all the authority of the existing collectors of customs of the Islands and their immigration inspectors to execute the immigration laws?

In promulgating this act of Congress in these Islands, Governor Taft stated that it had been

decided by the legal adviser of the Secretary of War that while this law, in its restrictions upon the admission of aliens into the United States, applies to the Philippines, the provisions therein made for the enforcement of the law by the Secretary of the Treasury Department of the United States and the Commissioner-General of Immigration do not apply here, and that the new immigration law should be enforced in the same manner in these Islands as the previous law on the same subject was enforced – that is, through the Collector of Customs and his subordinate officers.

The Secretary of the Treasury must also have given a similar construction of this law, otherwise he would, without doubt, have appointed immigration inspectors and established immigration stations in the Islands long ago – in fact, as far back as April 29, 1902, when the Chinese exclusion act was made applicable to the Philippines, he being then charged with its enforcement.

It follows that these two Departments of the Government, the two Departments concerned in the enforcement of the immigration and exclusion laws, have held that the duty of administering these laws in the Philippines was to be continued in the customs department of the Islands, and by its immigration inspectors.

Much weight is always given by courts to the contemporaneous exposition of statutes, and the construction of the departments affected by an act may be resorted to in determining the meaning, scope, and intent of the statute. (Matter of Breslin, 45 Hun., N. Y., 210.)

> "The principle that the contemporaneous construction of a statute by the executive officers of the government, whose duty it is to execute it, is entitled to great respect, and should ordinarily control the construction, of the statute by the courts, is so firmly embedded in our jurisprudence that no authorities need be cited to support it." (Pennoyer *vs.* McConnaughy, 140 U. S. Sup. Ct. Rep., 363.)

It is objected, however, by the petitioner to this view that a departmental construction of a statute will not be followed by the courts when it is clearly erroneous, and that it is only in cases of doubt that the construction given to an act by the Department becomes material. The answer to that statement is that the construction given to the act under consideration by the Departments is not clearly erroneous. On the contrary, to give it the con- struction contended for by the petitioner would be to disregard the expressed authority of the

President of the United States, other acts of Congress, the rules, orders, and regulations of the War Department, and. the acts of the Commission. In fact, it would amount to holding that every prohibited Chinaman turned back since April 29, 1902, was turned back unlawfully; and that every contract laborer, insane person, person afflicted with loathsome or contagious disease, convict, prostitute, pauper, polygamist, anarchist, and nihilist excluded from the Islands after March 3, 1903, was excluded wrongfully and without authority on the part of collectors of customs. Such a construction would lead to the conclusion that there is now no one in the Islands having authority to enforce the immigration laws or the Chinese exclusion law, and would lead to making null and void the very object of the act itself – the exclusion of certain objectionable persons. Such a strict construction, a construction which would result in great injustice to the Government, should not be given to the law, and such a construction is not favored by courts.

In the case of the United States *vs.* Kirby (7 Wall., 482) it was said by the Supreme Court of the United States that “all laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd.consequence. It will always, therefore, be presumed that the legislature intended *exceptions* to its language which would avoid results of this character. The reason of the law should prevail in such cases over the letter.”

On its face this act of Congress, approved March 3,1903, bears evidence that every line and every section of it were not intended to apply to these Islands. In fact, the application of the act to the Islands seems to have been an afterthought on the part of Congress, as was section 39, prohibiting the sale of intoxicating liquors in the Capitol building of the United States. The very title of the act is “An act to regulate the immigration of aliens into the United States.” Every section of it down to section 33 shows plainly that it was originally drafted for application and enforcement in the United States only, but when that section was inserted it evidently became the purpose to apply the prohibitive sections and remedial provisions of the act to the Philippines, leaving the administration of the law in the Islands as it was before; for it is plain that the Commissioner-General’ of Immigration is not charged with the administration of all of this act.

The provision of section 22 of the law to the effect that the Commissioner-General shall have charge of the administration of laws relating to the immigration of aliens into the *United States* evidently does not confer upon him authority to collect $2 for each alien, which is to be paid to collectors of customs under section 1; nor to control district attorneys in prosecuting suits under section 5; nor to direct circuit and district judges of the United

States under section 29; nor interfere Avith the naturalization of aliens under section 39; and in fact that part of the act relating t0 naturalization can not be applied here at all; nor to enforce the liquor law in the Capitol under section 34.

So that even if the petitioner's allegations come within the letter of the statute, they are not within the statute unless they are within the intention of the makers.

Congress surely could not have intended to require this law to be enforced in the Philippines and at the same time make no provision for its enforcement here, even for a single day; and yet if the petitioner's contention be correct, that it could not have been enforced here until immigration inspectors had been appointed by the Secretary of the Treasury to administer the law, the conclusion is inevitable that from twenty-five to thirty or. forty days must have expired after the passage of the act before such inspectors could have arrived in the Islands from the United States, and that during the interim the law could not be enforced here. But it may be answered that the Secretary of the Treasury could appoint men here by a cable notification. Waiving the question of the legality of such an appointment, the reply is that the Secretary has no authority to make appointments other than in accordance with the civil-service laws and rules, not of the Philippines but of the United States.

It is provided by section 24 of this act that "immigration inspectors and other immigration officers, clerks, and employees shall hereafter be appointed and their compensation fixed and raised or decreased, from time to time, by the Secretary of the Treasury, upon the recommendation of the Commissioner-General of Immigration, and *in accordance tvith the provisions of the civil-service act of January 16,1883."*

This civil-service law makes provision for open, competitive examinations for testing th6 fitness of applicants for the public service, and for their classification.

It also provides that all the offices, places, and employments so arranged in classes shall be filled by selection, according to the grade, from among those graded highest as the result of such competitive examination. So that immigration inspectors would have to be selected in the United States and sent out here under the provisions of this act.

It follows, then, that to give this act a literal construction, such as the court is asked to give it, is to hold that Congress meant to leave the ports of these Islands open and free of access to all the objectionable and prohibited classes mentioned in the act for a period of at least a month, and for such further period as the Secretary of the Treasury might see fit to remain inactive.

Injustice may be done to a government as well as to individuals, and it is the duty of courts in interpreting statutes to so construe them, if possible, as to do no one injustice.

In the case of Haydenfeldt *vs.* Daney Gold Mining Company (93 U. S., 634-638) it was said: "If a literal interpretation of any part of it [a statute] would operate unjustly or lead to absurd results, or be contrary to the evident meaning of the act taken as a whole, it should be rejected."

A noted case decided by the Supreme Court of the United States June 1, 1903 (The Territory of Hawaii *vs.* Osaki Mankichi), seems to be in point. The petitioner in that case was tried on an information by the Attorney-General instead of an indictment by a grand jury. The bill was
found May 14, 1899. The Hawaiian Islands were by resolution of Congress annexed to the United States July 7, 1898, and formally transferred August 12, 1898. All laws of the Islands not inconsistent with that resolution, *nor contrary to the Constitution of the United States*, were to remain in force until Congress otherwise determined. The criminal procedure followed in this case was in accordance with the penal laws of the Islands before annexation. It was contended that, as the information was found after annexation and was contrary to the provision of the Constitution of the United States which stipulates that "no person shall be held to answer for a capital or other infamous crime unless upon a presentment or indictment of a grand jury," a literal construction of the Congressional resolution would lead clearly to the conclusion that the defendant, as he was not indicted by a grand jury, could not be laAvfully convicted, but the Supreme Court held that such a construction should not be given to it; that it was the intention of Congress to give a reasonable and proper time to those Islands to provide by legal means for the new methods of procedure.

> "Congress," the court said, "could not have intended that every provision of the Constitution should be imposed upon the Islands for which no previous preparation had been made, and that to hold otherwise would be to hold that every criminal convicted in the Islands between August 12, 1898, and June 14, 1900, when by act of Congress the Islands were formally incorporated as the 'Territory of Hawaii,' must be set at large. Such a result could not have been within the contemplation of Congress."

I am of the opinion, therefore, that Congress did not intend to disturb the system of

administration of the immigration laws in these Islands as that system existed prior to March 3, 1903, and that the Collector of Customs, who was authorized under the rules relating to the enforcement of the immigration laws issued by the Secretary of War April 14,1899, to act as immigration officer and continued by the acts of the Commission, had jurisdiction to determine whether or not the petitioner comes within the class of aliens who are prohibited from coming into the Philippine Islands, and has lawful right to detain said petitioner for that purpose.

The same conclusion is reached by another process of reasoning.

Even if it were the intention of Congress to have immigration officers appointed for these Islands by the Secretary of the Treasury, to take the places of those appointed under what may be termed the war power of the President, for the purpose of executing the immigration laws, the act of Congress providing for such appointments is not mandatory, but directory.

There is no time fixed within which he is required to make the appointments, and it has been held that even when the law specifies a time within which an act is to be done by a public officer, unless the nature of the act or language used shows that time was intended as a limitation of his power, the act has been held merely directory, and subsequent appointments made by the officer were held to be valid.

(People *vs.* Murray, 15 Cal., 221; Saunders *vs.* Grand Bapids, 46 Mich., 467; People *vs.* Allen, 15 Wendell, N. Y., 486; Metcalf *vs.* Mayor, 17 N. Y. State Repts., 97.)

And until such time as immigration inspectors shall be appointed by the Secretary of the Treasury and the Commissioner-General of Immigration, or as expressed in Circular No. 13, *supra*, “until the establishment of immigration stations in said territory” (the Philippines), the collectors of customs and their immigration inspectors must continue to enforce the immigration laws.

The question as to whether or not an official appointed by military authority in time of war in a conquered territory had authority to continue to execute the laws until his successor qualified, pursuant to an act of Congress, was determined in the affirmative in the case of Cross *vs.* Harrison (16 How., U. S., 164).

It appears that in that case, after the conquest of California by the United States forces in 1847, the President, as Commander in Chief of the Army and Navy, authorized the military authority to form a civil government for the conquered territory, with power to impose and

collect duties at the port of San Francisco.

Col. R. B. Mason became acting governor before the treaty of peace with Mexico, and he appointed the defendant, Harrison, a civilian, collector of the port. Harrison administered the duties of that office before the date of the treaty, February 3, 1848, and after the treaty was ratified. In March, 1849, by act of Congress, San Francisco was made a collection district of the United States, and from that date the defendant, as such collector, appointed under the war power of the President, continued to collect duties until the collector appointed by the Secretary of the Treasury qualified November 13, 1849. So that Harrison continued to collect duties for a period of about eight months after the Secretary of the Treasury was authorized to appoint his successor.

The plaintiff sought to recover duties paid to defendant while acting as collector at different periods, including the latter one from March to November, 1849, claiming, that when Congress acted and made San Francisco a collection district and placed it within the jurisdiction of the Secretary of the Treasury in March, 1849, and authorized the Secretary to appoint a collector, the defendant ceased to be the lawful collector, and had no right to exact duties.

The court held that the defendant had lawful authority for his own acts, even down to the time his successor qualified and entered upon the performance of his duties.

In speaking of the government established by the author1 ities the court said:

> "It had its origin in the lawful exercise of a belligerent right over a conquered territory. It had been instituted during the war by command of the President of the United States. It was the government when the territory was ceded as a conquest, and it did not cease as a matter of course or as a necessary consequence of the restoration of peace.
>
> "The President might have dissolved it, but he did not do so. Congress could have put an end to it, but that was not done. The right inference from the inaction of both is that it was meant to continue until it had been legislatively changed. No presumption of a contrary intention can be made. Whatever may have been the cause of delay, it must be presumed that the delay was consistent witli the true policy of the Government."

Whatever may be the cause of the delay on the part of the Secretary of the Treasury in establishing immigration stations in these Islands, assuming that he has authority to do so, it must be presumed that such delay is consistent with the policy of the Government, and we should not, because of such delay, hold that the immigration laws are not to be enforced here.

It follows that until such time as the Secretary of the Treasury appoints others to execute the immigration laws the administration remains, as was held in the Harrison case, *supra*, in the hands of those appointed by the President through the Secretary of War, and that, therefore, the Collector of Customs for the Archipelago has authority to enforce that law.

The motion for the discharge of the petitioner is, therefore, denied, but permission is given to him to be heard in this proceeding on the other two questions presented in his petition, viz, (1) whether or not the defendant is a member of a learned profession, and (2) whether "accountants of like kind unemployed can or can not be found in this country;" the hearing to take place at such time as may be agreed upon.

Arellano, C. J., Torres, Cooper, and *Mapa, JJ.,* concur.

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

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[1] Public Laws, Vol. I, p. LXIII.

CONCURRING

WILLARD, J.:

I base my concurrence in the order on the last ground stated in the opinion. I see nothing in the act of March 3, 1903, which indicates that the law, so far as it relates to alien contract labor, was not to be administered in Porto Rico and Hawaii by the Treasury Department through the Commissioner-General of Immigration. Nor do I see anything therein which indicates that it was not to be so administered in these Islands. If the Commissioner-General of Immigration had, immediately after the passage of the act, established immigration stations here and appointed officers to enforce this law therein, I doubt if the Collector of Customs or anyone else would have questioned the authority of such officers.

The act of June (>, 1900 (2 Sup., U. S, Rev. Stat, 1434), was passed at a time when the Philippines were being administered through the War Department. That act is in part as follows:

> "And hereafter the Commissioner-General of Immigration, in addition to his other duties, shall have charge of the administration of the Chinese-exclusion law and of the various acts regulating immigration into the United States, its territories and the District of Columbia, under the supervision and direction of the Secretary of the Treasury."

Section 22 of the act of March 3, 1903, is in part as follows:

> "That the Commissioner-General of Immigration, in addition to such other duties as may by law be assigned to him, shall, under the direction of the Secretary of the Treasury, have charge of the administration of all laws relating to the immigration of aliens into the United States, and shall have the control, direction, and supervision of all officers, clerks, and employees appointed here-under,]."

Congress in this act of June 6, 1900, apparently intentionally excluded the Philippines, Porto Rico, and Hawaii from the jurisdiction of the Commissioner-General. It has been said that this act of March 3, 1903, is a mere reenaetment of existing laws, with changes only in the classes of persons who could be admitted, If Congress had intended to still exclude the Commissioner-General from the Philippines, nothing would have been more natural than to have retained the phraseology of the act of June 6, 1900, which they had evidently used for that purpose. This change was evidently made to make this section of the law conform to section 33, which expressly declares that the term "United States" shall include these Islands.

If there is any inconsistency between the act of July 1, 1902, providing for the administration of the Philippines through the War Department, and the act of March 3, 1903, the latter law must prevail.

The law being in force here, there still remains the question as to who should administer it until the new officials should be appointed.

The case of Cross *vs.* Harrison, supra, is authority for the proposition that the old officers can administer the law until the new ones arrive. Prior to March 3, 1903, it was the duty of the Collector of Customs to administer such immigration laws as might be in force in the Islands. He, therefore, under the said case of Cross *vs.* Harrison, had the right to administer this law after March 3 and until some one was appointed by proper authority to act in his place. To the claim of the petitioner that the Commissioner-General of Immigration has had more than sufficient time in which to make such appointment, it may be answered that a court would be engaged in a very delicate matter, especially in this case, if it should undertake to say how much time an administrative officer should use in making appointments for new offices. In the case of Cross vs. Harrison more than nine months elapsed. This claim can not be sustained.

While it is alleged that the board of inquiry which passed upon the petitioner's case .was improperly constituted, it has not been proved that it was not convened in substantial compliance with the new law. It was selected by the person lawfully exercising the authority of a commissioner of immigration at the port of Manila, and might have been composed of immigration officials.

The petitioner was, in my opinion, entitled to appeal from the finding of this board and its confirmation by the Collector, to the Secretary of the Treasury through the Commissioner-General of Immigration. He did not, however, exercise this right. Even if he had, or if the board of inquiry had been improperly constituted, these facts would not give the petitioner the right to land.

Date created: April 15, 2014