

Tiaco Vs. Forbes

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Court : US Supreme Court

Decided On : May-05-1913

Appeal No. : 228 U.S. 549

Appellant : Tiaco

Respondent : Forbes

Judgement :

Tiaco v. Forbes - 228 U.S. 549 (1913)

U.S. Supreme Court Tiaco v. Forbes, 228 U.S. 549 (1913)

Tiaco v. Forbes

Nos. 254, 255, 256

Argued April 24, 1913

Decided May 5, 1913

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ERROR TO THE SUPREME COURT

OF THE PHILIPPINE ISLANDS

SYLLABUS

Where the act originally purports to be done in the name and by the authority of the state, a defect in that authority may be cured by the subsequent adoption of the act.

The deportation of a Chinaman from the Philippine Islands by the Governor General prior to an act of the legislature authorizing such deportation is to be considered as having been ordered in pursuance of such statute.

Sovereign states have inherent power to deport aliens, and Congress is not deprived of this power by the Constitution of the United States.

The ground on which the power to deport aliens rests necessitates that it may have to be exercised in a summary manner by executive officers.

Congress not being prevented by the Constitution from deporting

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aliens, the Philippine government cannot be prevented from so doing by the Bill of Rights incorporated in the Act of July 1, 1902.

The deportation of aliens in this case by the Philippine government was not a deprivation of liberty without due process of law.

The local government of the Philippine Islands has all civil and judicial power necessary to govern the Islands, and this includes the power to deport aliens.

The extension by Congress of the Chinese Exclusion and Immigration Laws to the Philippine Islands does not prevent the government of the Islands passing an act removing aliens therefrom.

The English rule is that an act of state is not cognizable in any municipal court. It is within the power of the Legislature of the Philippine Islands to declare an act of the executive which is within its power to authorize to be not subject to question or

review.

A statute which protects the executive protects the subordinates as well as the chief executive.

Quaere whether the Governor of the Philippine Islands has authority, by virtue of his office alone, to deport aliens, or immunity from action for a deportation made in good faith, whether he had the power or not.

Quaere whether, historically speaking, prohibition was the proper remedy; but, in this case, this Court should not interfere with the local practice in a matter relating to the administration of local statutes except for good cause shown.

The act of the Philippine Legislature passed April 19, 1910, ratifying the action of the Governor General in ordering the deportation of plaintiffs, Chinamen, and declaring it to have been an exercise of authority vested in him by law in all respects legal and not subject to question or review, was within the power of the legislature, and took from the court, in which an action had been brought to enjoin the deportation, jurisdiction to try the case, and the judgment granting a writ of prohibition is affirmed.

The facts, which involve the power of the Philippine government to deport aliens, are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

The three plaintiffs in error severally sued the defendants in error, alleging that Mr. Forbes was the Governor

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General of the Philippines, Trowbridge Chief of the Secret Service of Manila, and Harding Chief of Police of the same; that the plaintiff was a Chinese person, lawfully resident in the Philippines, and that the defendants forcibly deported the

plaintiff to China and forcibly prevented his return for some months; that the plaintiff returned on March 29, 1910, and that the defendants threatened and were trying to expel the plaintiff again, Trowbridge and Harding acting throughout under the order of the defendant Forbes. There was a prayer for an injunction and damages. The defendants demurred, but the demurrer was overruled and a temporary injunction granted. Thereupon Forbes, Harding, and Trowbridge sued for writs of prohibition against the judge and the respective plaintiffs, alleging that the expulsion was carried out in the public interest and at the request of the proper representative of the Chinese government in the Philippines, and was immediately reported to the Secretary of War. The complaints were demurred to, but the supreme court overruled the demurrers, granted the prohibition, and ordered the actions dismissed. The judge, having declined to join in the applications for writs of error, was made a respondent, and the cases are here on the ground that the plaintiffs have been deprived of liberty without due process of law. Act of Congress, July 1, 1902, c. 1369, 5, 32 Stat. 691, 692.

The purpose of the first suits, of course, was to make the Governor General personally answerable in damages for acts done by him by color of his office and in pursuance of what he deemed to be his duty, as well as to prevent his exercising similar power in the future. This sufficiently appears by the declarations, which suggest, and do not exclude, official action, and is alleged in the complaints for prohibition. On April 19, 1910, in less than three weeks after the original suits were brought, the Philippine Legislature passed an act

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which, reciting that the Governor General had authorized the deportation "in the exercise of authority vested in him by law," enacted that his action was "approved and ratified and confirmed, and in all respects declared legal, and not subject to question or review." So that, if ratification by that body can dispose of the matter, no court has authority to entertain the suits.

The first doubt that naturally would occur is whether, if a right of action had vested previously, it could be taken away by such a statute. But it generally is recognized

that, in cases like the present, where the act originally purports to be done in the name and by the authority of the state, a defect in that authority may be cured by the subsequent adoption of the act. The person who has assumed to represent the will and person of the superior power is given the benefit of the representation if it turns out that his assumption was correct. *O'Reilly v. Brooke*, [209 U. S. 45](#) , [209 U. S. 52](#) ; *United States v. Heinszen*, [206 U. S. 370](#) , [206 U. S. 382](#) ; *The Paquete Habana*, [189 U. S. 453](#) , [189 U. S. 465](#) ; *Phillips v. Eyre*, L.R. 6, Q.B. 1, 23; *The Secretary of State v. Kamachee Boye Sahaba*, 13 Moore, P.C. 22, 86. *Compare West Side Belt R. Co. v. Pittsburgh Construction Co.*, [219 U. S. 92](#) ; *Dunbar v. Boston & Providence R. Co.*, 181 Mass. 383, 385, 386.

Therefore, the deportation is to be considered as having been ordered by the Governor General in pursuance of a statute of the Philippine Legislature directing it under their combined powers, and it is unnecessary to consider whether he had authority, by virtue of his office alone, as declared by the statute, or whether, if he had not, he had immunity from suit for such an official act done in good faith. The former matter now is regulated by a later statute providing for a hearing, etc. No. 2113. February 1, 1912. On the question thus narrowed, the preliminaries are plain. It is admitted that sovereign states have inherent power to deport aliens, and seemingly that

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Congress is not deprived of this power by the Constitution of the United States. *Fong Yue Ting v. United States*, [149 U. S. 698](#) , [149 U. S. 707](#) -728; *Wong Wing v. United States*, [163 U. S. 228](#) , [163 U. S. 231](#) ; *Fok Yung Yo v. United States*, [185 U. S. 296](#) , [185 U. S. 302](#) ; *Turner v. Williams*, [194 U. S. 279](#) , [194 U. S. 289](#) -290. Furthermore, the very ground of the power in the necessities of public welfare shows that it may have to be exercised in a summary way through executive officers. *Fong Yue Ting v. United States*, *supra*; *United States v. Ju Toy*, [198 U. S. 253](#) , [198 U. S. 263](#) ; *Moyer v. Peabody*, [212 U. S. 78](#) , [212 U. S. 84](#) -85. So that the question is narrowed further to the inquiry whether the Philippine government cannot do what unquestionably Congress might.

As Congress is not prevented by the Constitution, the Philippine government cannot be prevented by the Philippine Bill of Rights alone. Act of July 1, 1902, c. 1369, 5, 32 Stat. 691, 692. Deporting the plaintiffs was not depriving them of liberty without due process of law unless, on other grounds, the local government was acting beyond its powers. But the local government has all civil and judicial power necessary to govern the Islands. Act of March 2, 1901, c. 803, 31 Stat. 895, 910, Act of July 1, 1902, c. 1369, 1, 32 Stat. 691. The forms are different, but, as in Hawaii, the proximate source of private rights is local, whether they spring by inheritance from Spain or are created by Philippine legislation. See *Kawananakoa v. Polyblank*, [205 U. S. 349](#) , [205 U. S. 354](#) ; *Perez v. Fernandez*, [202 U. S. 80](#) , [202 U. S. 91](#) -92. It would be strange if a government so remote should be held bound to wait for the action of Congress in a matter that might touch its life unless dealt with at once and on the spot. On the contrary, we are of opinion that it had the power as an incident of the self-determination, however limited, given to it by the United States.

By 86 of the Act of July 1, 1902, all laws passed by the Philippine government are to be reported to Congress,

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which reserves power to annul them. It is worthy of mention that the law under consideration was reported to Congress, and has not been annulled. The extension of the Chinese exclusion and immigration laws to the Philippine Islands has no bearing on the matter. The right to remain, for instance, under the Act of April 29, 1902, c. 641, 4, 32 Stat. 176, does not prevail over a removal as an act of state.

It is held in England that an act of state is a matter not cognizable in any municipal court. *Musgrave v. Pulido*, 5 App.Cas. 103, 108. And that was the purport of the Philippine act declaring the deportation not subject to question or review. As the Bill of Rights did not stand in the way, and the implied powers of the government sanctioned by Congress permitted it, there is no reason why the statute should not have full effect. It protected the subordinates as well as the Governor General, and

took jurisdiction from the court that attempted to try the case.

Whether prohibition is technically the proper remedy, historically speaking, we need not inquire. On such a matter, we should not interfere with local practice except for good cause shown. In substance, the decision of the Supreme Court was right.

Judgment affirmed.

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