

[G.R. No. 11366. March 28, 1916]

**THE INSULAR COLLECTOR OF CUSTOMS, PETITIONER, VS. GEORGE R. HARVEY,
JUDGE OF FIRST INSTANCE OF MANILA, AND CO PUY, RESPONDENTS.**

D E C I S I O N

JOHNSON, J.:

This is an original action for the writ of certiorari, presented in this court by the Attorney-General on behalf of the Insular Collector of Customs. The important facts as gathered from the petition, are as follows:

First. That on or about the 6th of July, 1915, the said Co Puy presented a petition in the Court of First Instance of the city of Manila for the writ of habeas corpus against the Insular Collector of Customs.

Second. That on or about the 4th of October, 1915, the petition for the writ of habeas corpus was amended.

Third. That on or about the 4th of October, 1915, the Insular Collector of Customs filed his answer to the petition for the writ of habeas corpus, in which, among other things, he alleged that—

“On August 18, 1915, and September 14, 1915, the board of special inquiry, in accordance with an order of this court of July 9, 1915, conducted a rehearing, and again investigated the question of petitioner’s right to enter the Philippine Islands, and on September 16, 1915, rendered a decision finding that Co Puy was the minor son of a Filipina, and allowed him to enter; but finding that Co Puy is a full blooded Chinese person, a subject of the Republic of China, presenting no evidence showing him to be a member of any of the classes privileged to enter the Philippine Islands.”

Fourth. Upon the issue presented by the petition and the said quoted answer, the cause was set down for trial in the Court of First Instance of the city of Manila on the 22d of October, 1915. The case was heard by the Honorable George R. Harvey, who, after hearing the respective parties, reached the conclusion that "There is no satisfactory evidence in this case upon which the court may properly base a finding or conclusion that the petitioner is not a full-blooded Chinaman," dismissed the petition for the writ of habeas corpus and remanded the petitioner, Co Puy, to the custody of the Insular Collector of Customs for deportation.

Fifth. On the 30th of October, 1915, and within twenty-four hours after the rendition of the judgment, an appeal was taken to the Supreme Court of the Philippine Islands.

Sixth. On the 9th of November, 1915, the appellant, Co Puy, presented a motion in the Court of First Instance of the city of Manila, praying that he be permitted to file a personal bond for his provisional liberty, pending his appeal.

Seventh. On the same day (the 9th of November, 1915) the Honorable George R. Harvey, judge, granted the said *ex parte* motion for bail, fixing the amount at ₱1,000.

Upon the foregoing facts the Insular Collector of Customs prays that the writ of certiorari be issued and that this court make an order reversing the action of the lower court and directing that Co Puy be returned to the custody and control of the Insular Collector of Customs, there to remain until such time as it may be determined that such custody is illegal and unwarranted, or until the determination of the aforementioned appeal.

To the foregoing petition the Honorable George R. Harvey answered, in which answer he briefly set up the facts as they occurred in the lower court. The defendant, Co Puy, presents a demurrer to the petition.

The question presented by the pleadings is whether or not a Chinese alien who is seeking admission into territory of the Philippine Islands under the Chinese exclusion laws, is entitled to bail during the pendency of his appeal after it has been decided that he is not entitled to enter the territory of the United States.

Upon that question we have an express provision of law. Section 6 of the Act of Congress of May 5, 1892, (27 Statutes at Large, page 25) provides:

"After the passage of this Act on an application to any judge or court of the

United States in the first instance for a writ of habeas corpus, by a Chinese person seeking to land in the United States, to whom that privilege has been denied, *no bail shall be allowed*, and such application shall be heard and determined promptly without unnecessary delay.”

It would seem clear, therefore, that bail is prohibited to Chinese persons seeking to land in the United States to whom that privilege has been denied. If the law prohibits bail, then the courts are without jurisdiction to grant it.

It would seem to be unnecessary to decide the question whether or not the court is expressly forbidden by statute from releasing on bail pending appeal, where the relator is a Chinese immigrant. Concededly there is such a prohibition where the application is being considered by the court in the first instance. That being so, it would be a singular exercise of discretion which would release an immigrant on bail after the court has decided that he shall not be permitted to enter the country, when the statutes require that he shall not be released on bail before the court has so decided and when there is still a possibility that its decision might be favorable to him. (*In re Chin Yuen Sing*, 65 Fed. Rep., 788; *In re Ah Moy*, 21 Fed. Rep., 808; *U. S. vs. Sisson*, 220 Fed. Rep., 538.) The writ of habeas corpus which was presented in the lower court did not put the relator into the custody of the court. The courts can not enlarge the rights of Chinese aliens simply because they have presented a writ of habeas corpus. If they are not entitled to bail during the pendency of the petition for the writ of habeas corpus, they are much less entitled to it after the court has denied their petition.

Considering the express and mandatory Acts of Congress relating to bail, we are of the opinion and so hold that the lower court exceeded its jurisdiction in granting bail to the said Co Puy. Therefore the order granting bail is hereby annulled and set aside and pronounced to be of no effect, and it is hereby ordered that the said Co Puy be remanded to the custody of the Insular Collector of Customs for such disposition as the law sanctions. So ordered.

Arellano, C. J., Torres, Moreland, Trent, and Araullo, JJ., concur.

