

OLEGARIO BRITO, ET AL., PETITIONERS AND APPELLEES, VS. THE COMMISSIONER OF IMMIGRATION, RESPONDENT AND APPELLANT.*G. R. No L-12325. October 30, 1959*

Ponente: PARAS, C.J.

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This is an appeal interposed by the Commissioner of Immigration against the decision of the Court of First Instance of Manila, enjoining him from proceeding with the arrest and investigation of Tan Soo alias So Wa, for purposes of deportation.

On December 8, 1954, Olegario Brito, a citizen of the Philippines, married Tan Soo alias So Wa in the British Crown Colony of Hongkong. The latter came to the Philippines on February 9, 1955. After due investigation, the Board of Special Inquiry rendered a decision dated February 18, 1955, finding Tan Soo alias So Wa to be the lawful wife of a Filipino citizen, and thereby admitted her as a Philippine citizen. As this decision was confirmed by the Board of Commissioners, Tan Soo was accordingly allowed to land.

On January 16, 1957, however, the Commissioner of Immigration issued a warrant of arrest against Tan Soo alias So Wa, on account of the discovery of the marriage contract between Olegario Brito and one Narcisa Maya entered into in Manila on July 17, 1943, before Municipal Judge Mariano-Nable. To prevent her arrest upon a warrant issued in order to show cause why she should not be deported, Tan Soo alias So Wa, jointly with her husband, brought the present petition for prohibition, mandamus and injunction with preliminary injunction against the Commissioner of Immigration before the; Court of First Instance of Manila. On January 23 1957, the lower court issued a writ of preliminary injunction, ordering the respondent Commissioner of Immigration to desist and refrain from arresting and/or molesting petitioner Tan Soo alias So Wa. On March 27, 1957, after the respondent Commissioner had filed his answer and the petitioners presented their reply, the lower court rendered judgment in favor of the petitioners, requiring the respondent Commissioner to refrain from arresting or deporting petitioner Tan Soo alias So Wa until a final decision has been rendered by a competent court on the issues raised in said proceeding. Hence, this appeal.

The pivotal issue is whether or not the respondent Commissioner of Immigration has the power to determine the validity of the marriage contracted by the petitioners for the purpose of arresting and deporting Tan Soo alias So Wa. There is no question that the power to deport is limited to aliens, that the citizenship of the respondent in deportation proceedings is determinative of the jurisdiction of the Commissioner of Immigration, and that the, power to deport carries that of determining the respondent's nationality. But if the question of nationality is dependent upon the validity of the respondent's marriage, may the Commissioner of Immigration pass judgment thereon?

The lower court ruled against appellant Commissioner of Immigration. The latter, however, drew a distinction between a voidable marriage and one which is void ab initio. He argues that in the first case the court may be correct, but in the second, where the marriage is void ab initio, the Commissioner of Immigration may pass upon

the validity of said marriage—no judicial decree being necessary to establish its nullity.

It is true that in relation to the marriage of petitioners no assumption' can arise or should be made from the mere discovery, of a marriage contract between Olegario Brito and Narcisa Maya executed in 1943, without proof that the first wife was still alive or that said first marriage was otherwise still subsisting in 1954. As a matter of fact, it is to be supposed that the marriage between the herein petitioners in 1954 is valid, altho this is only a prima facie presumption which may be overcome by evidence that it was contracted during the lifetime of Narcisa Maya and before the first marriage of Olegario Brito was annulled or dissolved. In any event, these considerations going into the validity of the marriage of petitioners are not an obstacle to the preliminary proceedings to be conducted in this particular case by the appellant Commissioner of Immigration pursuant to Sec. 37 (a) of the Philippine Immigration Act, as amended, to determine whether or not a prima facie case exists against appellee Tan Soo alias So Wa to warrant her deportation.

Wherefore, the decision appealed from is reversed, without costs. So ordered.

Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Endencia, Barrera, and Gutierrez David, JJ., concur.

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