

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LUI PAK CHUEN, DEFENDANT AND APPELLANT.*G .R. No. 17147. August 04, 1921*

Ponente: VILLAMOR, J.

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It appears from the evidence: (a) That on October 17, 1919, the accused was charged by the provincial fiscal of Samar before the justice of the peace of Calbayog, Samar, with the offense of residing in the Philippine Islands without any legal certificate, in violation of sections 4 and 5 of Act No. 702; (b) that upon trial held on October 20, 1919, said justice of the peace found him guilty and transmitted the record to the Court of First Instance; (c) that on November 6, 1919, the provincial fiscal filed in the Court of First Instance a new information alleging the same facts stated in the previous information; (d) that on January 28, 1920, the case was heard before the Honorable Eulalio E. Causing, Judge of Court of First Instance of Samar, who on January 31st of said year rendered judgment declaring that the accused is a Chinese laborer, who, having been required in January, 1919, by a municipal policeman of Calbayog to exhibit his certificate of residence required by Act No. 702, did not exhibit it because he did not have any, and therefore found him guilty of a violation of said law and ordered his deportation to China; (e) that the accused was notified of the preceding decision on February 2, 1920, without having appealed therefrom within the period allowed by law; (f) that the accused was sent to Manila and placed under the custody of the Constabulary for his deportation. Upon his arrival at Manila, one Gregorio Nicolas filed in the Court of First Instance of Manila, against the Chief of the Constabulary, a petition for the writ of habeas corpus which was denied by the court, but from which decision appeal was taken to this court, the same being registered under R. G. No. 17306 (decided August 4, 1921, not reported); (g) that pending decision in the case of habeas corpus the attorney for the defense presented on April 24, 1920, a motion in the Court of First Instance of Samar, asking that, under the provisions of section 113 of the Code of Civil Procedure, the judgment of January 31, 1920, should be set aside. To this motion Exhibits A, B, C, and D, of the defense were attached. The first two exhibits are copies of the correspondence between the attorney for the defense and the Collector of Customs with respect to the search for the certificate of the accused; the third, a certificate of the Collector of Customs which shows that the accused is the same person mentioned in section six certificate, a copy of which is Exhibit A of the prosecution, and the fourth, that is, Exhibit D, is a copy of section six certificate, certified by the Collector of Customs and containing a copy of the document under which the accused obtained permission to enter the Philippine Islands; (h) that on November 1, 1920, the Honorable N. Capistrano, then Judge of First Instance, denied this motion on the ground that his predecessor, Judge Causing, in rendering his decision of January 31, 1920, undoubtedly took into consideration the special certificate issued in favor of carnival visitors; (i) that in November, 1920, the accused appealed from the order overruling the motion of April 24, 1920, and on the 12th of the same month of November he also presented a notice of appeal against the judgment of January 31, 1920.

The appellant alleges that the trial court erred: (1) In finding in his decision of January 31, 1920, that the accused did not have the right to remain in the Philippine Islands and in ordering his deportation; (2) in denying the motion asking that the judgment should be set aside under the provisions of section 113 of the Code of Civil

Procedure, and, in connection with this point, the appellant asks for the reversal of the judgment appealed from, relying upon the doctrine announced in the case of *United States vs. Li Sui Wun* (32 Phil., 151).

In view of the evidence before us, we are of the opinion, and so hold, that the trial court erred in denying the motion of April 24th presented under the provisions of section 113 of the Code of Civil Procedure. According to Exhibits C and D which are attached to the motion, the court should have set aside the judgment of deportation rendered on January 31, 1920, because, according to the doctrine laid down by this court in the case of *United States vs. Li Sui Wun*, supra, based upon various decisions of the Supreme Court of the United States which are cited in said case, the accused in the present case has the right to remain in the Philippine Islands. The office of the Attorney-General recommends that the record be remanded to the court of origin with instructions to the effect that a new trial should be held and that in view of the newly discovered evidence, the order of deportation of January 31, 1920, should be set aside. Attorney for the defense, while not objecting to the recommendation of the Attorney-General, maintains, nevertheless, that this court, by virtue of the provisions of said section 113 of the Code of Civil Procedure, may revoke the order appealed from and set aside said judgment of deportation.

As it appears from the evidence that the motion of April 24th was presented within the period required by law, and as in our judgment the failure of the accused to exhibit his certificate is excusable, for said certificate was filed in the office of the Collector of Customs, as was subsequently discovered by his attorney; and on the other hand, as it appears from the evidence before us that the appellant has the right to remain in the Philippines in accordance with the doctrine laid down in the case of *United States vs. Li Sui Wun*, supra, we are of the opinion that it is proper to apply to the appellant the benefits conceded by section 113 of the Code of Civil Procedure, according to which this court may relieve a party or his legal representative from the enforcement and the effect of an order, or judgment, or other proceeding taken against him which results from mistake, inadvertence, surprise, or excusable negligence on his part.

In the case of *United States vs. Li Sui Wun*, supra, this court said:

"Chinese students, merchants, tourists, etc., except laborers, are not prohibited from entering territory of the United States. They may enter when they are armed with the 'section six certificate.' When they are provided with the 'section six certificate,' they may enter territory of the United States, the same as any other alien of the most favored nation. If such Chinamen are once admitted into territory of the United States, by virtue of their possession of the 'section six certificate,' they may remain therein, exactly the same as any other alien of the most favored nation. The legal possession of the 'section six certificate' removes the prohibition of Chinese aliens to enter territory of the United States, and places them upon the same footing as aliens of the most favored nations.

"A Chinese person admitted into territory of the United States under the 'section six certificate,' as a student, and who later becomes a laborer cannot be deported. Having entered legally, he cannot be deported because he later becomes a laborer. A Chinese person admitted into territory of the United States, as a student, may remain after he ceases to be a student, and may earn his living in any lawful manner, without subjecting himself to deportation. If a Chinaman has been lawfully permitted to enter territory of the United States, he may lawfully change his vocation without incurring the penalty of deportation. Once legally admitted he may remain during his pleasure, so long as he conforms with the laws of the United States."

In view of what has been said the order appealed from should be reversed, and the judgment of deportation of January 31, 1920, against the accused Lui Pak Chuen, who is hereby declared to be entitled to remain in the Philippine Islands, is set aside with costs de oficio. So ordered.

Johnson, Araullo, Street, and Avancena, JJ., concur.

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