

NGO TIM, PLAINTIFF AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLANT.*G.R. No. 10213. March 19, 1915*

Ponente: JOHNSON, J.

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It appears from the record that on or about the 13th day of June, 1914, the petitioner arrived at the port of Manila on the steamship Linan, and asked permission to enter the Philippine Islands, as the legitimate minor son of a resident Chinese merchant by the name of Ngo Yap. His right to land was inquired into by the board of special inquiry who, after hearing several witnesses, reached the conclusion that the alleged father, Ngo Yap, was not a resident merchant and therefore denied him the right to land. Later a rehearing was granted and several more witnesses were called for the purpose of showing that the said Ngo Yap was a resident Chinese merchant. The board again, after hearing said witnesses, found that Ngo Yap was not a resident Chinese merchant. An appeal was taken from the decision of the board of special inquiry to the Collector of Customs, who affirmed said decision.

Later a petition for the writ of habeas corpus was presented in the Court of First Instance of the city of Manila and the Solicitor-General, for and on behalf of the Collector of Customs, answered said petition and made a part of his answer the entire record of the department of customs. After a consideration of said record, the Honorable Simplicio del Rosario, judge, reached the conclusion that the said Ngo Yap was a resident Chinese merchant and that his minor son, Ngo Tim, had a right to enter the Philippine Islands.

From that decision the Insular Collector of Customs appealed to this court. The only question presented by the appeal is whether or not the facts adduced before the board of special inquiry showed that the said Ngo Yap is a merchant within the definition and meaning of that term as used in the Chinese Exclusion Law.

It is a rule well established in cases like the present, where a Chinaman alleges that he is a merchant within the territory of the United States, that the burden is upon him to prove that fact. (U. S. vs. Lung Hong, 105 Fed. Rep., 188; U. S. vs. Lee You Wing, 211 Fed. Rep., 939.) In an effort to discharge that burden, the said Ngo Yap presented a number of witnesses in support of his own declaration. He testified that he was 57 years old; that he was engaged in the drug business at No. 407 Calle Nueva, in the city of Manila; that he had a partner and that he had about P4,000 invested in said business. Several other witnesses were presented, who swore that they knew the said Ngo Yap; that he was engaged in the drug business on Calle Nueva, some of whom stated that the merchandise in said business amounted to about P8,000. Other witnesses estimated the value of the merchandise in said business at between seven and eight thousand pesos. There is positively no proof to the contrary in the record, except a memorandum written into the record, which is not supported by any documentary proof whatever, to the effect that the said Ngo Yap, in the month of February, 1914, presented a merchant's affidavit, in which he stated that he was conducting a drug and medical business at No. 407 Calle Nueva, in the city of Manila, and that his application was denied. Said memorandum further shows that Ngo Yap presented a statement of his taxes showing that he had paid P13.33 for the first quarter of 1914, being one-third of 1 per cent of the gross sales

for that period. He also presented a retail liquor dealer's license, showing that he had paid P24 for the last six months. He also presented a druggist liquor dealer's license, showing that he paid a 10-peso fee for the first quarter of the year. Said memorandum further shows that he presented a certificate of residence. Said memorandum further shows that an investigation was made by the Bureau of Customs as to the value of his business, as a result of which it was found that his entire stock was estimated by said Bureau to be worth about P800. Said investigation seems to have been made on or about the 5th of February, 1914.

It would seem from said memorandum that the customs department refused to issue to the said Ngo Yap the usual merchant's certificate upon the ground that his business was so insignificant that they could not consider him a merchant. It is a matter of common knowledge that the actual stock of goods on hand in mercantile establishments varies from time to time, even from day to day, and much more from month to month. Moreover, there is no proof in said memorandum, even admitting the same as proof in the case, that the inspector who made the examination had any knowledge whatever of the value of drugs. The value of drugs cannot be fixed by bulk. It is also to be noted that the examination of the said Ngo Yap in the present case took place several months after the date of said examination. At the time he swore positively that he had invested in said business about P4,000. The fact that the value of the merchandise on hand in February was only P800 is no proof that it was not P4,000 in June. Two or three other witnesses estimated the value of the merchandise in said business at seven or eight thousand pesos. Even granting that the report of the inspector as found in said memorandum was correct and that P800 did represent the amount of the merchandise employed in said business, yet that fact would not be sufficient to conclude that Ngo Yap was not a merchant. It is sufficient if the business was that of a merchant and that he had a substantial and real interest in the same. The law does not require a large amount of money to be invested in order to constitute a mercantile business.

The Supreme Court of the United States, in the case of *Tom Hong vs. United States* (193 U. S., 517, 521), held that in order to be a "merchant," the man must have a substantial and real interest in the business. It is not necessary that his name appear as a member of the firm or as engaged in the business, if it is proven that he has a real and substantial interest in the same. The main purpose is to inquire if the person is a bona fide merchant, having in his own right an interest in a real mercantile business, in which he does only the manual labor necessary to the conduct thereof.

In the present case there is absolutely no proof showing that the said Ngo Yap is not a merchant. All of the proof shows the contrary—that he is a merchant residing in the city of Manila.

For all of the foregoing reasons, in our opinion the judgment of the lower court should be and is hereby affirmed, with costs. So ordered.

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

Carson and Moreland, JJ., concur in the result.

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