

LEE JUA, PLAINTIFF AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.*G. R. No. 10576. October 20, 1915*

Ponente: JOHNSON, J.

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This was a petition for the writ of habeas corpus presented by the plaintiff in the Court of First Instance of the city of Manila, on the 27th day of November, 1914, on behalf of Lee Koan, Lee Hio, Lee Teng, and Lee Liang.

It appears from the record that some time before the 18th day of September, 1914, the said Lee Koan, a female of the age of forty-one years, Lee Hio, a female of the age of fifteen years, Lee Teng, a male of the age of ten years, and Lee Liong, a male of the age of eight years, arrived at the port of Manila, on the steamship Taisang, and asked permission to enter the Philippine Islands. An examination was held before the board of special inquiry on the 18th day of September, 1914, for the purpose of inquiring into the right of said persons to come into the Philippine Islands. During said examination it appeared that the said Lee Koan was the wife of a Chinaman, by the name of Lee Kiu; that she was a Chinese woman; that she and the said Lee Kiu had been married in China; that the said Lee Hio, Lee Teng, and Lee Liong were their legitimate, minor children; that the husband, Lee Kiu, had been a merchant in the city of Manila for some time prior to the month of March, 1914; that some time prior to the month of March, 1914, the said Lee Kiu returned to China, and there died on the 16th day of the first moon, of the year 1914; that the said Lee Koan and her three children had never been in the Philippine Islands; that during the time that the said Lee Kiu resided in the Philippine Islands, he had accumulated considerable property.

After hearing the foregoing facts, the board of special inquiry, in a unanimous decision, decided that "the board finds that Lee Koan, Lee Hio, Lee Teng, and Lee Liong are the widow and minor children, respectively, of Lee Kiu, a former resident Chinese merchant, who died in China on the 16th day of the first moon of this year (1914). The Chinese exclusion laws are intended to include all persons of that race (Chinese), except those specifically exempted from its provisions. The widow and minor children of a former resident Chinese merchant, now deceased, are not so exempt. The detained do not present the certificates required by law for the admission of Chinese and they are accordingly refused landing."

From that decision an appeal was taken to the Collector of Customs of the port of Manila, who, on the 29th day of October, 1914, rendered a decision affirming the decision of the board of special inquiry, which was in part as follows : "These applicants claim to be the widow and children of one Lee Kiu, a former resident of the Philippine Islands, now deceased. The evidence is to the effect that the said Lee Kiu died in China in the early part of the present year, and that he left some property interests in Manila. No claim is made that any of these applicants ever resided in the Philippine Islands heretofore. In order to be admitted, therefore, at this time, it is necessary for them to comply with the provisions of section six of the Act of Congress approved July 5th, 1884. An arrangement might be made for their temporary admission to look after their interests here, but no request for such temporary admission has been made. Under the circumstances, the said Lee Koan, Lee Hio, Lee Teng, and Lee Liong are therefore refused landing, and it is hereby ordered that they be returned to their port of embarkation on the next

sailing of the vessel that brought them to the Philippine Islands, or other vessel of the same line."

Later, and on the 27th day of November, 1914, a petition for the writ of habeas corpus was presented in the Court of First Instance of the city of Manila, by Lee Jua, on behalf of the said Chinese persons. On the 10th day of December, 1914, the Honorable Ramon Avancena, Attorney-General for the Philippine Islands, answered said petition.

On the 10th day of December the attorneys for the petitioners presented a motion, asking that the answer presented by the Attorney-General be struck from the files, for the following reasons: "First. That the Attorney-General has not the legal capacity to defend and make return to a writ (of habeas corpus) directed to the Insular Collector of Customs, nor to show cause to an order directed to the same official why the writ should not be issued.

"Second. That the answer does not state facts sufficient to constitute a defense, nor does it contain the matters required by the statute to be contained in returns to writs of habeas corpus.

"Third. That the answer is insufficient, even if an answer made by the Attorney-General on behalf of the Insular Collector of Customs might, under any circumstances, be considered sufficient."

Said motion was duly answered and argued by the Attorney-General

Finally on the 6th day of January, 1915, the Honorable Simplicio del Rosario, judge, rendered the following decision: "In these habeas corpus proceedings Lee Jua seeks to secure the liberty of his mother, Lee. Koan, and his brothers Lee Hio, Lee Liong and Lee Teng aged 15, 8, and 10 years respectively, which persons have been detained by the customs officials for the purpose of deporting them to China.

"The reason for this detention is that the said Chinese have never been in these Islands, although they are the widow and children, respectively, of Lee Kiu, a Chinese merchant who formerly resided in the Islands but who died in China in the month of March of 1914. They landed in these Islands on the 17th of August of the same year, without first meeting the requirements of said section 6 of the Act of Congress of July 5, 1884. They do not say they wish to reside here temporarily for the purpose of settling the estate of said Lee Kiu in these Islands.

"The Collector of Customs having affirmed the decision rendered by the board of special inquiry after due examination of the mother and brothers of the petitioner, and no proof having been adduced to show that the customs officials have abused their authority in denying the wishes of the mother and brothers of Lee Jua to land in these Islands, this court, according to the immigration laws and the repeated decisions of the Supreme Court of these Islands, has no power to intervene in the present case.

"The permanent release of Lee Koan and her children Lee Hio, Lee Liong and Lee Teng is hereby denied and the said persons will be placed at the disposition of the Collector of Customs of this port for deportation, once this decision becomes final."

From that decision the plaintiff appealed to this court and made the following assignments of error: "(I.) The court erred when it overruled appellant's motion to strike from the files the return of the respondent to the order to show cause why the writ should not issue. (II.) The court erred when it found, by inference at least, that the board which heard the matter at the customhouse was a legal board, and lawfully qualified to hear and determine the right of Lee Koan, Lee Hio, Lee Liong and Lee Teng to enter the Philippine Islands. (III.) The court erred when it found that there was any legal evidence upon which the conclusions of the board could be lawfully based. (IV.) The court erred when it did not find that the board and the Insular Collector of Customs abused the discretion, power and authority in them reposed, when they refused Lee Koan, Lee Hio, Lee Liong and Lee Teng a landing in the Philippine Islands. (V.) The court erred when it did not find that the decision of the board and of the Insular

Collector of Customs, on appeal therefrom, were based upon an erroneous interpretation of the law, and therefore, null and void. (VI.) The court erred in not finding Lee Koan, Lee Hio, Lee Liong and Lee Teng entitled to enter the Philippine Islands. (VII.) The court erred when it refused to issue the writ, and when it remanded Lee Koan, Lee Hio, Lee Liong and Lee Teng to the Insular Collector of Customs for deportation."

The first assignment of error is based upon the motion, presented by the plaintiff in the court below, to have the answer of the Attorney-General struck from the files, for, three reasons enumerated above. With reference to the first of said reasons, to wit, that the Attorney-General was not authorized to answer for the Insular Collector of Customs, it may be said: (First) that the Attorney-General, on behalf of the Insular Collector of Customs, in his official capacity, made answer to the order of the court to show why the writ of habeas corpus should not issue; (second) that the Insular Collector of Customs for the Philippine Islands is an officer of the Government of the Philippine Islands; (third) that by virtue of the provisions of section 45 of Act No. 136 it is the duty of the Attorney-General to defend all causes, civil and criminal, to which the Government of the Philippine Islands, or any officer thereof, in his official capacity, is a party.

With reference to the second of the reasons alleged by the appellant why the answer presented in the court below should be stricken from the files, it may be said that in conformity with the provisions of section 538 of Act No. 190 the Attorney-General set up as a part of his answer, as Exhibit A, the only authority under which the body of said Chinamen was being held. That authority was the decision of the Collector of Customs. We believe that the answer of the Attorney-General sufficiently set forth the cause of their detention. In proceedings like the present, there never exists a "writ," a "warrant," an "execution," or other process. The proceedings for determining whether Chinese aliens may enter territory of the United States do not require the issuance of "writs," "warrants," "executions," etc. There were therefore, no copies of such documents to be filed or presented as a part of his answer.

What we have said with reference to the first and second reasons given by the petitioner for the dismissal of the answer in the court below, we believe, fully answers the third ground mentioned above.

With reference to the second assignment of error, it may be said that that question has been decided in so many cases by this court, contrary to the contention of the appellant, that we deem it unnecessary now to discuss it, further than to cite some of the leading cases: *In re Allen* (2 Phil. Rep., 630); *Ngo-Ti vs. Shuster* (7 Phil. Rep., 355); *Lo Po vs. McCoy* (8 Phil. Rep., 343, 348); *Jao Igco vs. Shuster* (10 Phil. Rep., 448); *Luzuriaga vs. Collector of Customs* (10 Phil. Rep., 762); *Juan Co vs. Rafferty* (14 Phil. Rep., 235); *Uy Kai Hu vs. McCoy* (24 Phil. Rep., 151); *Tan Chin Hin vs. Collector of Customs* (27 Phil. Rep., 521, 526); and scores of others not reported.

With reference to the third assignment of error, it may be said that the board had before it the following facts: (first) that the said Lee Koan, Lee Hio, Lee Teng, and Lee Liong were Chinese persons; (second) that they had been born in China; (third) that they had never been in the Philippine Islands; and (fourth) did not claim a domicile or residence in said Islands.

In our opinion the fourth, fifth, sixth, and seventh assignments of error may be logically discussed together.

These assignments present the question whether or not a Chinese woman and her minor children have a right to enter territory of the United States, without the "section six certificate," simply because the husband and father, also a Chinaman, had at one time, but not now, lived in the Philippine Islands. It is admitted that the husband and father had lived in the Philippine Islands; that he had died in China, some time prior to the time when the petitioner herein asked permission to enter the Islands. The question presented in the present case is not one where the wife and minor children were seeking entrance into territory of the United States in order to enjoy the companionship and protection of the husband and father.

We have decided heretofore: (a) That the wife and minor children of a resident Chinese merchant can enter territory of the United States, without the "section six certificate," while such husband and father still resides there. (U. S. vs. Yu Kiao, 20 Phil. Rep., 307; U. S. vs. Gue Lim, 176 U. S., 469; Ang Eng Chong vs. Collector of Customs, 23 Phil. Rep., 614.) (b) That a minor who had been admitted into territory of the United States to enjoy the companionship and protection of his parents, had a right to reenter such territory during his minority, even after the death of his parents, who died while residing in the Philippine Islands. (Chua Shun vs. Collector of Customs, 28 Phil. Rep., 175.) (c) That the wife of a resident Chinese merchant and her minor children who had been admitted into territory of the United States and who had resided therein for a number of years, some of which minor children had been born in the Philippine Islands, had a right to return to the Philippine Islands, after a temporary visit to China whither they had gone with an idea of returning to the Philippine Islands with the husband and father, notwithstanding the fact that the father died in China during said temporary visit. (Ang Qua Shi vs. Collector of Customs, R. G. No. 8805.[1]) (d) That a minor child who accompanied his father, a resident Chinese, on his return to the Philippine Islands was not permitted to enter, after the father had been refused admission upon the ground that he had a contagious disease; that his right to be admitted depended upon the presence of his parents in the territory of the United States. (Lo Po vs. McCoy, 8 Phil. Rep., 343).

None of the foregoing cases, however, are analogous to the facts in the present case. The husband and father was no longer a resident of the Philippine Islands; the wife and minor children had never resided in the Islands; they were not possessed with the "section six certificate;" they were not possessed with any of the rights which justified the department of customs in admitting them into the territory of the United States. The judgment of the lower court is, therefore, hereby affirmed, with costs. So ordered.

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

[1] Not published.

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