

TAN LIN JO, PLAINTIFF AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.

G. R. No. 10699. October 26, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is a petition for the writ of habeas corpus. It was presented in the Court of First Instance of the city of Manila, on the 30th day of January, 1915.

From the record brought to this court the following facts appear: (First) That on the 11th day of December, 1914, there arrived at the port of Manila, on the steamship Taisang seventy-eight aliens, among whom was the said Tan Lin Jo: (second) an examination was held concerning the right of the said Tan Lin Jo to enter the Philippine Islands, by the board of special inquiry, on the 8th day of January, 1915; that after investigating the right of the petitioner to enter, the board of special inquiry denied him the right to enter upon the ground that he did not present the certificate required by law for the admission of Chinese: (third) an appeal from the decision of the board of special inquiry was taken to the Insular Collector of Customs who, on the 19th day of January, 1915, affirmed the decision of said board: (fourth) the said Tan Lin Jo alleges that he is fourteen years of age; that he is the son of Tan Sui Bok who had been a merchant in the municipality of Surigao, in the Philippine Islands; that his father (Tan Sui Bok) died in the Philippine Islands in the year 1908, leaving an estate valued at P3,992.93.

The foregoing facts present the question whether or not the minor son of a resident Chinese merchant has a right to enter territory of the United States, after the death of his 'parent (father). There is no allegation that his mother ever resided in the Philippine Islands. The proof shows that his mother died in China some years before the commencement of the present proceeding. It is also admitted that the petitioner had never lived in the Philippine Islands. While he now makes some claim to a right to enter the Philippine Islands as a student, he does not present the "section six certificate."

Upon the question presented here, with reference to the right of the petitioner to enter the Philippine Islands, we have heretofore decided:

- (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. (Lee Jua vs. Collector of Customs p. 24, ante, and other cases there cited.)
- (b) That a minor (Chinaman) who had been admitted into territory of the United States to enjoy the companionship and protection of his Chinese parents had a right to reenter such territory, during his minority, even after the death of his parents who had died while residing in the Philippine Islands. (Lee Jua vs. Collector of Customs, supra, and other cases there cited.)
- (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, had a right to return to the Philippine

Islands, after a temporary visit to China whither they had gone with the 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. (Lee Jua vs. Collector of Customs, *supra*, and other cases there cited.)

(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 landing upon the ground that he had a contagious disease; that his right to be admitted depended upon the presence of his parents in territory of the United States. (Lee Jua vs. Collector of Customs, *supra*, and other cases there cited; Lo Po vs. McCoy, 8 Phil. Rep., 343.)

(e) That the wife and minor children (who never had been in the Philippine Islands) of a resident Chinese merchant, which merchant had left the Philippine Islands and had died in China, were not permitted to enter the Philippine Islands, after the death of the husband and father. (Lee Jua vs. Collector of Customs, *supra*, and other cases there cited.)

In discussing the question of the right of the minor children of a resident Chinese merchant to enter territory of the United States, after death of the father, the Federal District Court of the Northern District of California, in the case of *Ex parte Chan Fooi* (217 Fed. Rep., 308) decided, in a case where, between the time of the sailing of the minor from China and his arrival in territory of the United States, the father died, that the minor child had no right to enter. In that case the court said: "It is urged by petitioner that, as he was not compelled under the conditions existing at the time of his departure from China to procure the certificate required by section six, because his right to enter as the minor son of a merchant was not dependent upon the production of such certificate, he should now be permitted to make other proof of his status as a student or a merchant, and should not be put to the expense and trouble of returning to China to secure the certificate which, it is further urged, the Act makes the sole evidence permissible only on the part of a person producing the same; the implication being that a person not producing the same may be permitted to furnish other evidence of his right to enter. To this latter contention I can not agree. Section 12 of the Act of Congress provides:

" 'No Chinese person shall be permitted to enter the United States by land without producing to the proper officer of customs the certificate in this Act required of Chinese persons seeking to land from a vessel.'

"This provision indicates quite clearly the intention of Congress that no person falling within the provisions of section six may be allowed to enter the United States in the absence of the certificate therein required.

"Equally untenable is the other contention that the petitioner is relieved from producing the certificate, and entitled to furnish other evidence of his status as a student or a merchant, because of the circumstances attending his departure from China, and the hardship that would be occasioned by compelling him to return thereto. Had his father lived, he could have entered by virtue of his communicated status as the son of a resident Chinese merchant.

With the death of the father, this status was destroyed; but this fact does not relieve him of the necessity of producing the evidence required by law, if he desires to establish another and very different status upon which to base a right to land. For students or merchants coming to the United States for the first time, the Act prescribes the only evidence upon which entry into the United States may be had. If petitioner desires to enter as a student or a merchant, coming here for the first time, he must fortify himself with the evidence which the law requires [declares] 'the sole evidence permissible.' (The section six certificate). That it would work a hardship upon him to require the production of this evidence is beside the question. That he left China without this evidence, because of his right to enter as the minor son of a merchant, cannot now relieve him of the necessity of producing it. The law is too clear upon this point to warrant a construction setting aside its terms. If, indeed, petitioner be a student, [or a merchant], as claimed, he might have procured a certificate to that effect before his departure from China.

Failing to do so, and relying solely, upon his communicated status, he cannot now complain of hardship because such communicated status was destroyed by the happening of a contingency, the death of his father, which in the nature of things, might happen at any time."

With reference to the first and second assignments of error, this court has heretofore decided that the Attorney-General for the Philippine Islands, in his official capacity, has a perfect right to represent the officials of the Insular Government in courts of record, and that he has a right to make return to a writ directed to the Insular Collector of Customs, by virtue of his official duties. (Section 45 of Act No. 136; *Tin Lio vs. Collector of Customs*, p. 32, ante; *Lee Jua vs. Collector of Customs*, supra.)

We have also decided in numerous cases that the department of Customs is authorized, in the first instance, to pass upon the question of the right of the Chinese aliens to enter the territory of the United States. (*Tin Lio vs. Collector of Customs*, supra; *Lee Jua vs. Collector of Customs*, supra.)

For all of the foregoing, we are of the opinion and so hold that the judgment of the lower court should be affirmed, with costs. So ordered.

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

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