

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. KONG FONG, DEFENDANT AND APPELLANT.*G.R. No. 10711. January 20, 1916*

Ponente: MORELAND, J.

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This is an appeal from a judgment of the Court of First Instance of Manila ordering the deportation of the appellant. He was arrested on a warrant issued out of the Court of First Instance of the city of Manila charging that he was a Chinese laborer found in the city of Manila, Philippine Islands, without having the certificate required by Act No. 702 of the Philippine Commission. On the day set for the hearing no evidence was introduced by the defendant or the Government except the person of the defendant who was before the court during the hearing. The court found the defendant to be a Chinese laborer within the Philippine Islands without authority of law to remain therein and accordingly ordered his deportation to China. This appeal was taken from that judgment.

The whole contention in this case is that the burden of showing that a defendant in this class of cases is a Chinese person or person of Chinese descent is on the Government; and that, in the case at bar, the Government having offered no evidence proving or tending to prove that fact, the order of deportation was without evidence to support it and was, therefore, arbitrary and void.

Section 3 of the Act of Congress of March 5, 1892, provides "that any Chinese person or persons of Chinese descent arrested under the provisions of this Act, or the Acts hereby extended, shall be adjudged to be unlawfully, within the United States, unless such person shall establish by affirmative proof his lawful right to remain in the United States." Section 4 of Act No. 702 provides that "any Chinese laborer * * * found within the Philippine Islands without such certificate of registration * * * may be arrested upon warrant issued by the Court of First Instance of the province * * * and brought before any judge of a Court of First Instance in the Islands, whose duty it shall be to order that such Chinese laborer be de- ported from the Philippine Islands, either to China or the country from whence he came * * *" unless he does certain things not necessary to mention here. The Act also contains the provision that "any Chinese laborer failing for any reason to secure the certificate required under this law within two years from the date of its passage (March 27, 1903) shall be deported from the Islands." Section 5 of said Act declares that "every Chinese person found without such certificate within the Philippine Islands after the expiration of the time limited by law for registration shall be presumed, in the absence of satisfactory proof to the contrary, to be a Chinese laborer and shall be subject to deportation as provided in section four of this Act."

From these provisions we are satisfied that appellant's contention is sound in so far as he asserts that it must appear to the satisfaction of the court that the person brought before it under the act is a Chinese person or person of Chinese descent before an order of deportation is proper. In other words, the burden of proof is on the Government to establish prima facie the fact that the person before it is a Chinese person or person of Chinese descent. But when that fact is established the Government need go no further. The burden is then on the alien to show his right to remain.

The rule that, before deportation is permissible, it must appear that the person charged is a Chinese person or person of Chinese descent does not necessarily mean that the Government must produce witnesses to prove that fact. We have already held in several cases that the language, personal appearance and racial characteristics, the dress, custom, manner and deportment of a person presenting himself for admission into the Philippine Islands, are facts which a board of special inquiry may use in determining that such person is a Chinese person or person of Chinese descent, and that an order or judgment based on such facts is not without evidence to support it. (*De la Cruz vs. Collector of Customs*, 26 Phil. Rep., 270; *Tan Beko vs. Collector of Customs*, 26 Phil. Rep., 254; *Que Quay vs. Collector of Customs*, p. 128, ante. The same rule undoubtedly applies to a case brought under Act No. 702. The principle governing the two cases is the same and the necessities equal. Accordingly, when the Court of First Instance held that the personal and racial characteristics, language and dress of the alleged alien were evidence of the fact that he was a Chinese person or person of Chinese descent, that finding was not without evidence to support it and cannot, therefore, be attacked on the ground that it was arbitrary and illegal. With this evidence before the court the burden of proof was shifted, as we have already stated, to the shoulders of the defendant, and it at once became his duty to establish to the satisfaction of the court that he was entitled to remain in the Philippine Islands. This he did not do, as he offered no evidence on that or any other subject.

Nor do we think that that provision of Act No. 702 which requires the court, in case it should find that the person before it must be deported, to order his deportation to "China or the country from whence he came," compels the Government to show from what country the immigrant came. The plain purpose of the statute was the deportation of a Chinese person to China unless he affirmatively established that he came from some other country. Under the statute the presumption is that a Chinese person comes from China; and he must be returned there unless he overcomes that presumption. Not having shown the country from which he came the court was correct in ordering his deportation to China. The courts and executive officials whose duty it has been to interpret and enforce the Chinese Exclusion Laws have repeatedly held that these laws are necessarily of the highest degree of technicality and that they should be strictly followed and obeyed. The policy of the Government is against the admission of Chinese laborers and in interpreting and enforcing the Chinese Exclusion Laws it must be the aim of the courts, wherever possible, to so construe them as to carry out their evident purpose. (*Wan Shing vs. United States*, 140 U. S., 424; 23 Op. Atty. Gen., 619; *In re Ah Kee*, 21 Fed. Rep., 701; *In re Wo Tai Li*, 48 Fed. Rep., 668.) If the courts were to hold that the Government must produce witnesses, or other evidence outside of the person of the alien himself, to prove that he was a Chinese person or person of Chinese descent together with the country from which he came, it would come near defeating the purpose of the Exclusion Laws. It would be practically impossible, in most cases, to produce such evidence; any evidence on that subject would be almost completely beyond the reach of the Government. It is ordinarily impossible for the Government to prove where a particular alien was born, or whether he is Chinese or of Chinese descent, or of the whole or half blood, or a mixture of Indian or Filipino; or any of the other facts which must be proved if the contention of the appellant is sound. It was not, in our judgment, the intention of the framers of the Chinese Exclusion Laws to put this burden on the Government. On the other hand, we believe it was their intention to permit a court or officer charged with the enforcement of those laws to make certain determinations of fact from the person of the individual himself,—from his ethnological and racial characteristics, from his appearance, his language, his dress, his manner, his deportment, and the place from which he came, if that fact is known. It is not an effective argument that a judge or officer may exercise that power arbitrarily and act unreasonably or illegally in his administration of the laws. The Supreme Court of the Philippine Islands is a court of last resort in the great majority of cases. It decides most of them on the facts as well as the law. If it chose, it could find the facts as it pleased whether they were supported by the evidence or not, and could, by such action, substantially destroy the administration of justice in the Philippine Islands. The fact that the court might do such a thing is no argument against giving it such power. It is presumed primarily that all officials will do their duty and no legitimate argument permits the assumption that

they will do otherwise.

For these reasons we are of the opinion that the Court of First Instance had before it evidence of the fact that the person charged was a Chinese person or person of Chinese descent, and, in the absence of evidence establishing the contrary, the court was clearly within its powers in ordering his deportation to China.

The judgment appealed from is affirmed, with costs against the appellant. So ordered.

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

Trent, J., did not sit in this case.

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