

UY PO, PETITIONER AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLEE.

G.R. No. 10729. March 07, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that on or about the 6th day' of July, 1914, the plaintiff and appellant arrived at the port of Manila, on the steamship Taisang, and applied for permission to enter the Philippine Islands. A memorandum was 19 years of age. During the investigation, however, he swore that he was 21 years of age; that he came from Amoy; that he had been born in China, of Chinese parents; that his father was a resident Chinese merchant in the Philippine Islands. The plaintiff was trying to enter the Philippine. Islands as the minor son of a resident Chinese merchant

The board of special inquiry, after hearing the witnesses and seeing the plaintiff, denied him the right to enter for the reason that he was not the minor son of a resident Chinese merchant, nor did he have the certificate required by law for the admission of Chinese. During the course of the opinion by the board of special inquiry, they said:

"The said Uy Po seeks admission to the Philippine Islands on the ground that he is the legitimate minor son of one Uy Kaan, a resident Chinese merchant. In the opinion of the board he (Uy Po) is in no sense of the term a minor and we place his age between twenty-five and twenty-seven, rather than twenty-one. He is a Chinese person who does not present the certificate required by law for the admission of Chinese and accordingly he is refused landing."

Later the plaintiff was granted a second hearing, after which the board of special inquiry again denied him the right to enter the Philippine Islands, upon the theory that he was of the age of 25 or 27 years and was not a minor.

An appeal was taken from that decision to the Collector of Customs and there affirmed. The Collector of Customs said, in the course of his opinion:

"From an inspection of the applicant, his entire physical appearance is such as to lead to the conclusion that he is a mature person, upwards of twenty-one years of age, and not a minor child in any sense of that term."

Later a petition for the writ of habeas corpus was presented in the Court of First Instance of the city of Manila. The case was duly brought on for trial. After hearing the respective parties, the Honorable Simplicio del Rosario found that there had been no abuse of authority on the part of the department of customs and denied the petition for the writ of habeas corpus.

From that decision the plaintiff appealed to this court and made several assignments of error. The first and second assignments of error have been decided against the contention of the appellant so frequently that we deem it unnecessary longer to cite authorities in support of our conclusions. The third, fourth, fifth, and sixth assignments of error present the question whether or not the customs authorities abused their power and discretion in refusing the plaintiff the right to enter the Philippine Islands.

An examination of the record shows that the customs authorities reached the conclusion that the plaintiff was not a minor. The record shows also that there was some proof upon which to base that conclusion. The customs authorities found that the plaintiff was more than 21 years of age. Whether or not he was a minor under the Chinese law is a question which is neither suggested nor discussed by the record. There being some proof to support the conclusions of the department of customs we must find, as we do hereby, that there was no abuse of authority.

The plaintiff however contends that even granting that he is 21 years of age, the decision of this Court in the case of *Chua Yu Seng vs. Collector of Customs* (R. G. No. 9896 not published) gives him a reasonable time within which to elect his place of abode. There is a statement in the decision in said case (*Chua Yu Seng vs. Collector of Customs*, *supra*) to support that contention. Whatever statement there is in that decision, however, in support of the contention of the plaintiff now, must be considered as obiter dicta. That part of that decision which relates to Chinese children, not born in the Philippine Islands, is purely obiter dicta. It was not necessary to that decision. In that case the person seeking admission had been born in the Philippine Islands and the court only intended to apply the decision to him and to cases exactly analogous. In the present case the plaintiff was not born in the Philippine Islands, and there is nothing in the law which justifies the court in extending to him the privilege of electing to take up his abode within territory of the United States within a reasonable time after reaching his majority.

While the legitimate children of citizens of the United States and the Philippine Islands, when raised abroad, have a reasonable time within which to elect or reject the citizenship of their parents, after becoming of age, no right of election of any kind has been extended to the children of resident Chinese who have never become citizens of the United States or of the Philippine Islands. The law specifically limits the right of the children of alien Chinese residents to enter the territory of the United States up to the date of their becoming of age, and in our opinion the right of election does not extend beyond that period.

The facts in the present case are clearly distinguishable from the facts in the case of *Chua Yu Seng vs. Collector of Customs*, *supra*. In that case the plaintiff had been born in the Philippine Islands and was clearly entitled to elect his place of abode within a reasonable time after reaching his majority. In the present case the plaintiff was born in China, of Chinese parents, and had never been in territory of the United States. The board of special inquiry were of the opinion that he was nearer the age of 25 or 27 than he was the age of 21 years. Whatever is found in the decision of this court in the case of *Chua Yu Seng vs. Collector of Customs*, indicating the right of Chinese children who have never been in territory of the United States to elect to enter the territory of the United States within a reasonable time after reaching their majority is purely obiter dicta.

For all of the foregoing reasons, the judgment of the lower court, as well as that of the collector of customs, is hereby affirmed, with costs. So ordered.

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

Trent, J., reserves his vote.

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