

VICENTE GÑILO, PLAINTIFF AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.*G. R. No. 10788. October 28, 1915*

Ponente: JOHNSON, J.

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The plaintiff and appellant was charged with being a Chinese laborer in the Philippine Islands, without the required certificate. He was duly arrested and taken before the administrative officers of the department of customs, and was there found, first, by the board of special inquiry, and second, by an appeal to the Collector of Customs, to be in the Philippine Islands unlawfully and in violation of the Act of Congress of February 20, 1907, and of the Chinese Exclusion Laws. It was found that he had landed in the Philippine Islands, without being duly authorized by law, or by any immigration inspector of the Bureau of Customs, as provided for by said Act of Congress and that he was remaining in the Philippine Islands contrary to law, and was ordered deported.

Later a petition for the writ of habeas corpus was presented in the Court of First Instance of the city of Manila. Answer was duly made to the petition for said writ and the cause was brought on for hearing before the Honorable Simplicio del Rosario who, after hearing the respective parties, reached the conclusion 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.

A number of the assignments of error have been heretofore decided by this court, in numerous cases. (Lee Jua vs. Collector of Customs, p. 24, ante; Tan Lin Jo vs. Collector of Customs, p. 78, ante. There remains, however, the question whether or not the department of customs, in denying the plaintiff and appellant the right to enter the Philippine Islands, abused the power and discretion vested in it, In the first place there is some proof to support the findings made by said department. The mere fact that the Collector of Customs refused to believe the witnesses presented by the appellant is not of itself an abuse of authority or discretion.

The plaintiff claims to have been born in the Philippine Islands. The Collector of Customs found that he was a Chinaman; that he was not born in the Philippine Islands.

A Chinese person claiming to have been born in territory of the United States has the burden of proof to establish such fact, by affirmative proof. (U. S. vs. Horn Lim, 223 Fed. Rep., 520; Moy Suey vs. U. S., 147 Fed. Rep., 697; Gee Cue Beng vs. V. S., 184 Fed. Rep., 383; 106 District Court of Appeals, 493.) Neither can a Chinese alien avoid that burden by merely stating to the officers of the department of customs, even under oath, that he was born in the territory of the United States. (U. S. vs. Horn Lim, supra.) The burden is upon the Chinese person who claims to be a citizen of the United States to sustain that fact by affirmative proof. (Tong Ting Ngar vs. U. S., 223 Fed. Rep., 523; Chin Bak Kan vs. U. S., 186 U. S., 193; Tom Hong vs. U. S., 193 U. S., 517.)

The plaintiff was denied the right to remain in the Philippine Islands, first, by the department of customs, and second, by the Court of First Instance of the city of Manila.

After a careful examination of the record brought to this court, we find no reason for reversing the conclusions of the Collector of Customs. The judgment of the lower court is, therefore, hereby affirmed, with costs. So ordered.

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

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