

**MARTINIANO VALDEZCO SY CHIOK, PETITIONER AND APPELLANT,
VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND
APPELLEE.***G.R. No. 11086. February 02, 1916*

Ponente: MORELAND, J.

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On or about June 3, 1915, the appellant arrived at the port of Manila claiming the right to enter the Philippine Islands as a citizen thereof by reason of having been born therein. He was refused admission by the immigration inspector who boarded the vessel on which he arrived, and held for examination by a board of special inquiry. On June 4th of the same year he was brought before a board of special inquiry composed of Messrs. Northrup and Nepomuceno, immigration inspectors, and Mr. Cushman, a stenographer employed in the Bureau of Customs, which proceeded to inquire into his right to enter the Philippine Islands. After hearing the testimony of the witnesses offered on behalf of the appellant the board rendered its decision refusing him landing on the ground that he was a Chinese person of the pure blood, not a mixture of Chinese and Filipino, that he was not the person he claimed to be but was a Chinese person without the certificate required by law for the admission of Chinese persons or persons of Chinese descent into the Philippine Islands. An appeal was taken from this decision to the Collector of Customs, where it was affirmed. Application was then made to the Court of First Instance of Manila for a writ of habeas corpus and, an order having been issued directing the appellee to show cause why the writ should not be issued, the matter came on for hearing in that court. After hearing the parties and after due consideration, the court found that the appellant had not shown any abuse of discretion or violation of law by the board of special inquiry and accordingly refused to issue the writ and remanded the appellant into the custody of the customs officials for deportation. This appeal is taken from that judgment.

Several errors have been assigned and argued in this court. The first one, based on the ground that the court refused to strike from the files on motion of the appellant the return to the writ of habeas corpus on the ground that it was made and signed by the Attorney-General and not by the person to whom it was directed, can be disposed of in a word. We have already held on several occasions that the Attorney-General has authority to make and sign the return to a writ of habeas corpus when the writ is directed to an official of the Bureau of Customs. (Lee Jua vs. Collector of Customs, 32 Phil. Rep., 24.)

This assignment of error is also based on the ground that the return does not state all of the facts required by law to be contained in the return. This question, like the other, has been disposed of by this court and needs no further consideration here. (Que Quay vs. Collector of Customs, p. 128, ante.)

The second assignment of error is based on the refusal of the Court of First Instance to take testimony in the proceedings for the writ of habeas corpus. This same question was discussed in the case of Que Quay, supra, but was not there decided. It having been squarely presented here, we take this occasion to pass on it finally. The Supreme Court has held in many cases that a Court of First Instance, to which a petition for a writ of habeas

corpus of the character of the one before us is presented, acquires no jurisdiction or authority to proceed in the premises until after the applicant for the writ demonstrates that the customs officials abused their authority or acted on a wrong principle of law or in violation of law. Until that is done the court can do nothing but dismiss the proceeding. A condition precedent, absolutely essential to further progress of the proceedings in habeas corpus, is the demonstration to the satisfaction of the court which entertains the proceedings of abuse of discretion or violation of law. If that condition is not met, then the proceedings must be dismissed. In the case at bar the petitioner offered testimony before the Court of First Instance for the purpose of showing his right to enter the Philippine Islands without having shown that the customs officials had exceeded their authority in one way or another or had violated the law. The offer was rejected by the court on the ground that no foundation had been laid for a trial in that court. It was held in the case of *Chin Low vs. United States* (208 U. S., 8), that the court in which the application for the writ was pending based on the ground that the applicant was a citizen of the United States and had been refused admission to the country arbitrarily and without the hearing provided by law would hear testimony relative to his citizenship but added that "unless and until it is proved to the satisfaction of the judge that a hearing properly so-called was denied, the merits of the case are not open, and, we may add, the denial of the hearing cannot be established by proving that the decision was wrong." From this it is clear that, while the court in which the proceeding for the writ is pending may hear evidence on the merits, it can do so only when it has been established to its satisfaction that the customs officials abused their authority or violated the law in refusing to give the hearing which the law required, or in some other manner. Moreover, the mere fact that the decision of the customs official or officials was wrong does not establish the right to be heard on the merits in the court in which the proceeding for the writ is pending. As we have already seen in the case at bar, the board of special inquiry gave the appellant a full hearing and every opportunity to establish his right to enter the Philippine Islands. In the judgment of the board he failed to establish such right in that he was unable to prove to the satisfaction of the board that he was a half-breed of Chinese and Filipino blood and that he was born in the Philippine Islands. On the evidence before it, the greater part of which consisted in the personal appearance, language, dress, custom and manner of the appellant and the fact that he came from a Chinese port, the board found that he was a person of pure Chinese blood unmixed with that of any other nationality or race. This also included the finding that the board, under all the facts and circumstances of the case, did not believe the testimony of the witnesses for the appellant and, accordingly, did not consider that the evidence offered by him established his right to enter. (*Que Quay vs. Collector of Customs*, p. 128, ante.)

The third assignment of error is based on the claim that the board of special inquiry before which appellant appeared and which passed on his right to enter was not legally constituted, in that it consisted of two immigration inspectors and a stenographer in the employ of the Bureau of Customs and not of three immigration inspectors.

This question has been frequently decided by this court adversely to the appellant's contention and needs no further consideration at this time. (*Que Quay vs. Collector of Customs*, supra; *Chieng Ah Sui vs. Collector of Customs*, R. G. No. 6579 [22 Phil. Rep., 361], affirmed by the Supreme Court of the United States.)

The fourth assignment of error is based on the fact that the board of special inquiry, in determining appellant's right to enter, took into consideration his personal appearance, ethnological and racial characteristics, language, dress, custom, manner and deportment and the fact that he came direct from a Chinese port, and based their decision in part thereon. The Supreme Court has already held that such evidence is competent and a finding based thereon is not without evidence to support it. Such evidence is sufficient to make a prima facie case for the Government. (*Que Quay vs. Collector of Customs*, supra; *Tan Beko vs. Collector of Customs*, 26 Phil. Rep., 254.) The Board, however, had other facts and circumstances on which it relied. A portion of its finding is:

"He does not understand a word of the Pangasinan language. His alleged mother and brother cannot speak Chinese. His alleged mother testified that Martiniano lived with her before he went to China and could speak

the Pangasinan language. The detained has no knowledge of Tayug or Dagupan. He does not resemble his alleged mother or brother, and does not appear to be a mestizo, but has the appearance of a full-blooded Chinaman.

"The board does not believe that he is the person mentioned in the certificate presented, and does not believe that he was born in the Philippine Islands. The board decides that he is a Chinese person, coming here without the certificate required by law. He is therefore refused landing."

The case of *Que Quay vs. Collector of Customs*, supra, also disposes of the fifth and sixth assignments of error which, among other things, refer to the fact that the Insular Collector of Customs decided the appeal without having seen the person of the appellant.

The eighth and ninth assignments of error are discussed together and relate to the claim that the appellant having been born in the Philippine Islands he is a citizen thereof. It is a sufficient answer to the argument of counsel based on these alleged errors to refer to the fact that the board of special inquiry on competent, material and relevant evidence found that the appellant was not born in the Philippine Islands. It has also been held by this court in *Munoz vs. Collector of Customs* (20 Phil. Rep., 494), and *Lee Jua vs. Collector of Customs* (32 Phil. Rep., 24), that even though a person is born in the Philippine Islands, he may lose his Philippine citizenship by emigrating to a foreign country and remaining there for a length of time after he has reached his majority sufficient to justify, if not require, the conclusion that he has renounced his Philippine citizenship and has elected to become a subject of the country to which he emigrated. According to the testimony of appellant himself he went to China when he was 8 years of age and returned here when he was 25. He does not appear to have expressed any intention of returning during that time or performed any act from which such an intention could be inferred. We are of the opinion that, on the record, the case falls within the doctrine laid down in the case of *Que Quay vs. Collector of Customs*, supra.

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

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

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