

LIM CHING, PLAINTIFF AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.

G.R. No. 11088. January 11, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that the plaintiff arrived at the port of Manila on the steamship Linan, on the 10th of May, 1915, and asked permission to enter the Philippine Islands. His right to enter was referred to the board of special inquiry, which, on the 11th of June, 1915, entered upon the examination of the right of the plaintiff to enter. During said examination, the plaintiff declared that he was 17 years of age; that he came from Amoy; that he had never been in the Philippine Islands before; that his father's name was Lim Qui Pia (Lim Piao) ; that his father was a resident merchant of the Philippine Islands.

His father, Lim Qui Pia was also sworn as a witness. He declared that Lim Ching was his son and that he was a merchant doing business at Aparri, Province of Cagayan; that he had P5,000 invested in said business. He also presented a statement from the Bureau of Internal Revenue, showing that he paid taxes in the year 1911, in the sum of P88.63; P157.55 for the year 1912; P53.52, for the year 1913. He also presented a statement from the office of the provincial treasurer, showing that he had paid taxes amounting to P42.99 for the year 1914; and P22.34 for the first quarter of 1915. The record contains a note evidently made by the stenographer, at the direction of the board of special inquiry, which states that Qui Pia "held license C, paragraph 5, assessment No. 32015." The record further shows that the representative of the board of special inquiry called up the license division of the Bureau of Internal Revenue by telephone, and was informed by said officer that license C, paragraph 5, is a peddler's license, entitling the holder thereof to peddle his goods from house to house.

The record contains several documents, one of which is called "Inspector's Notes." This document gives a statement of the business relations of Lim Qui Pia. In it we find the statement that he is engaged in the dry goods and general merchandise business; that his business is located at No. 8 Calle J. P. Carreon, Aparri, Cagayan, with license No. C—1—32015. If that is the statement to which the inspector referred when he made the note above referred to, that "Qui Pia holds license C, paragraph 5, assessment No. 32015," there is evidently some mistake in said note; that the license which Qui Pia held is not "license C, paragraph 5, assessment No. 32015," but "License No. C—1— 32015." While it is admitted that "license C, paragraph 5," is a peddler's license, it is also admitted, that license C, paragraph 1, is a merchant's license.

There are also some other documents in the record which show that Qui Pia (Que Pio) holds a license C, paragraph 1, instead of license C, paragraph 5. There are three of said documents. (See pages 37, 38, and 39.) There are other facts stated in the "note" above referred to, which are incorrect, as evidenced by the statements presented by Qui Pia from the Collector of Internal Revenue. For instance, the "note" states that he paid taxes for the year 1912, in the sum of P157.55; whereas, the collector's statement shows that the amount was but P57.55.

In addition to the foregoing proof that Qui Pia is a merchant and not a peddler, several other witnesses were also

sworn who declared positively that they had known Qui Pia, for a number of years and that he was a merchant, engaged in the business at No. 8 Calle J. P. Carreon. In addition to the declarations of the witnesses who had known him for a number of years, an affidavit was presented by one, Juan Bautista, a councilman of the municipality of Aparri, showing that Qui Pia was a merchant and had invested in his business the sum of P6,000, more or less; that his business was located at No. 8 Calle J. P. Carreon, in the municipality of Aparri.

Other witnesses who declared during the investigation, swore positively that Qui Pia was a merchant. The only semblance of proof against that fact is in the "note" above referred to, and we think we have shown that that "note" was erroneously made. We think the documents which are found in the record, clearly show that said "note" was erroneous, not only with reference to the class of the license which Qui Pia held, but was erroneous with reference to other facts also.

If we are right in the above conclusions, there is not a scintilla of evidence in the record which shows, or even tends to show, that Qui Pia is not a merchant doing business at No. 8 Calle J. P. Carreon, in the municipality of Aparri, Province of Cagayan. There being no proof whatever sustaining the finding of facts made by the board of special inquiry, we must find, as we now do, that there existed an abuse of authority, which justified the courts in considering the question of the right of the plaintiff to enter the Philippine Islands, as the minor son of a resident Chinese merchant. The lower court, in denying the petition for the writ of habeas corpus, did not take notice of the fact that the "note" made by the board of special inquiry, to the effect that Qui Pia held license C, of paragraph 5, was contrary to the facts stated in the report of the Bureau of Internal Revenue, which statement clearly shows that he was the holder of license C of paragraph 1, which is the license of a merchant.

In view of all of the foregoing, we are of the opinion that the judgment of the lower court denying the writ of habeas corpus must be revoked, and it is hereby ordered and decreed that the order of the department of customs denying the right of Lim Ching to enter the Philippine Islands as the legitimate minor son of Lim Qui Pia should be and is hereby revoked and it is hereby further ordered and decreed that the said Lim Ching be permitted to enter the Philippine Islands, and without any finding as to costs, it is so ordered.

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

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