

SEE CHIAT AND SEE HUAN, PETITIONERS AND APPELLANTS, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLEE.*G.R. No. 11267. August 31, 1916*

Ponente: JOHNSON, J.

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The question presented by this appeal is whether or not the Insular Collector of Customs abused his power, discretion, and authority in refusing the appellants the right to enter the Philippine Islands.

The record shows that the appellants arrived at the port of Manila on the steamship Linan on the 26th of April, 1915, and requested permission to enter the Philippine islands. They alleged that they were citizens of the Philippine Islands; that their mother was a Filipina and that their father was a Chinaman. They admitted that they had been born in China and had never been in the Philippine Islands before. Several witnesses appeared in their behalf. Their alleged mother appeared and swore that she had gone to China about twenty-eight or thirty years ago and had lived there with a Chinaman by the name of See Lo; that the two appellants were her children and that See Lo was their father.

An examination of the testimony shows some very important conflicts; for example, each of the appellants swears that they lived in their own house and that said house had three rooms; while the mother testified that they lived in a rented house with two rooms. See Chiat swore that he was twenty-two years of age. See Huan that he was twenty-four years of age. It does not seem probable, if the appellants are the persons whom they claim to be, that they could have lived there with their mother, as they allege, during their entire life, without knowing the number of rooms which the house contained in which they lived. It does not seem probable either that the mother could have been mistaken upon that question, providing they had lived together as they allege. That conflict in this testimony, together with others, evidently caused the board of special inquiry to disbelieve their testimony. The board of special inquiry in its decision said: "The board does not believe their testimony." The board believed that they were full-blooded Chinamen and laborers, coming to the Philippine Islands without the required certificates, and refused them the right to land.

From that decision an appeal was taken to the Collector of Customs who found that the appellants were not citizens of the Philippine Islands, but were Chinese persons not entitled by law to admission into the Philippine Islands.

Later a petition for the writ of habeas corpus was presented in the Court of First Instance of the city of Manila, and after hearing the respective parties the Honorable Simplicio del Rosario, judge, in a carefully prepared opinion reached the conclusion that the Collector of Customs had not abused the power or discretion which the law conferred upon him and denied the writ of habeas corpus, and ordered the appellants returned to the custody of the Collector of Customs for deportation.

From that judgment the appellants appealed to this court and made the following assignments of error:

"1. The court erred in failing to find that the failure of the Collector on appeal to see and weigh the evidence on which the excluding decision of the board of special inquiry was based, constituted abuse of his power and discretion and deprived the petitioners of their right to a full and fair hearing of their claim of right to enter the Philippine Islands.

"2. The court erred in finding that there was anything improbable or suspicious in the story that a woman who was born in the Philippine Islands, lived therein for 20 years, speaking the Tagalog language, then removed to China, where she lived for 30 years speaking Chinese, then returned and on April 26 entering into her old associations among people talking Tagalog, was able by July 14th next following such return, to recall her knowledge of, and be able correctly to testify in, her native language.

"3. The court erred in failing to find specifically as a fact that the petitioners have the appearance of mestizos and do not have the appearance of persons of the Chinese race.

"4. The court erred in failing to pass upon the question of whether as a matter of fact the petitioners or either of them do or do not resemble the person claiming to be their mother.

"6. That said board of special inquiry was not duly constituted and had no jurisdiction to exclude from the Philippine Islands these petitioners in a decision based wholly upon the provisions of the Chinese exclusion laws (Act of April 29th, 1902). Nor had the Collector jurisdiction to review said decision on appeal.

"6. The court erred in refusing to set the petitioners at liberty and in remanding them to the custody of the Collector of Customs."

With reference to the first assignment of error above noted, we have held in several cases that it was not necessary for the Collector of Customs, in an appeal from a decision of the board of special inquiry, to see and hear the witnesses, even though the board found from a personal examination of the alien that he belonged to the class of aliens who were not permitted to enter territory of the United States without the "section six certificate." (*Que Quay vs. Collector of Customs*, 33 Phil. Rep., 128; *Go Paw vs. Collector of Customs*, 33 Phil. Rep., 278; *Valdezco Sy Chiok vs. Collector of Customs*, 33 Phil. Rep., 406; See also *Co Pian vs. Collector of Customs*, 34 Phil. Rep., 310; *Obera vs. Collector of Customs*, R. G. No. 11087 [decided Jan. 8, 1916, not published.])

The rule is not only well established here in this jurisdiction, but also in the United States, in cases like the present, that where a board of special inquiry refuses a Chinaman the right to enter territory of the United States, even on the personal appearance, racial characteristics, language, dress, and manner of said alien, it is not necessary for the Collector of Customs, in his review of the proceedings of said board on appeal, to have before him the person of the alien nor to hear the witnesses again who testified before said board of special inquiry. The Collector of Customs is authorized to review the evidence and to pass upon its sufficiency without again hearing or seeing the witnesses.

With reference to the second assignment of error above-noted, an examination of the record shows that the alleged mother of the appellants, in her examination before the board of special inquiry, had some difficulty in understanding Tagalog. She stated, "I forgot Tagalog; I was in China so long." In the Court of First Instance, according to the finding of Judge Del Rosario, she spoke Tagalog very fluently and perfectly. Taking into consideration her own statement before the board of special inquiry with reference to her ability to speak Tagalog, in relation with the fluent manner in which she spoke it before the Court of First Instance, Judge Del Rosario did not believe that she had been in China for a period of 30 years. Judge Del Rosario believed that during a period of 30 years, without having an opportunity to speak her native tongue, she would have forgotten it more or less. That conclusion of the judge was in accordance with her own conclusion before the board of special inquiry. Evidently Judge Del Rosario referred to that fact, as he referred to other facts, simply for the purpose of indicating the reason why he did not believe her statements. Judge Del Rosario believed that she had only gone to China for the

purpose of learning to speak Chinese, in order that she might falsely represent that she was the mother of the appellants. It was simply Judge Del Rosario's appreciation of the facts which influenced his conclusion.

The third and fourth assignments of error may be discussed together. The board of special inquiry found as a fact that the plaintiffs did not resemble, in their facial appearance, their alleged mother; that they were not Filipino mestizos, but that they were full-blooded Chinamen. Alien Chinese seeking admission into territory of the United States are themselves exhibits. The board of special inquiry has a right to examine them and to determine from their personal appearance whether they are Chinamen or not. (*Leong Guen vs. Collector of Customs*, 31 Phil. Rep.» 417; *Go Paw vs. Collector of Customs*, 3a Phil. Rep., 278.)

With reference to the fifth assignment of error, that question has been decided against the contention of the appellants in so many cases that we will not now discuss it again. (*Chieng Ah Sui vs. Collector of Customs*, 22 Phil. Rep; 361; 239 U. S., 139; *Tin Lio vs. Collector of Customs*, 32 Phil. Rep., 32; *Que Quay vs. Collector of Customs*, 33 Phil. Rep., 128.)

In the case of *ex parte Momo Tomimatsu* (232 Fed. Rep., 376), it was held that a clerk in the immigration service may serve on the board of special inquiry.

For all of the foregoing reasons, we are of the opinion and so hold that there was no abuse of authority on the part of the department of customs. The decision of the Court of First Instance is therefore hereby affirmed with costs and it is hereby ordered and decreed that the appellants be returned to the Collector of Customs, in order that the judgment heretofore dictated by him may be enforced. So ordered.

Torres, Trent, and Araullo, JJ., concur.

Moreland, J., is in entire accord with this decision. He thinks, however, that Courts of First Instance should not enter upon the facts of a given case without it being first established, to their satisfaction, that the board of special inquiry abused its authority or violated the law in such a manner as to permit a review.

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