

ANTONIO GUEVARA, PLAINTIFF AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.

G.R. No. 11384. March 24, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that the plaintiff and appellant arrived at the port of Manila, together with twenty-five aliens, on the steamship Taisang, on or about the 16th of September, 1915, and requested permission to enter the Philippine Islands. The plaintiff was taken before a board of special inquiry and an examination was held concerning his right to enter the Philippine Islands. A number of witnesses were examined, at the close of which examination said board rendered a decision in which they found:

"That the detained (the plaintiff) is a full-blooded Chinese person, using this means to gain admission unlawfully into the Philippine Islands; that he is a subject of the Republic of China, coming to the Philippine Islands without the certificate required by law for the admission of Chinese. He is accordingly refused landing."

The plaintiff being informed of the conclusion of the board appealed to the Collector of Customs who, on the 29th of September, 1915, rendered a decision in which he said:

"After examining the evidence presented before the board of special inquiry and considering all of the facts and circumstances of the case, together with the arguments offered by counsel, and being fully advised in the premises, it is adjudged and decided by the undersigned that said appeal be overruled and denied; the decision of the board of special inquiry that this immigrant is a Chinese person and not entitled to admission into the Philippine Islands and is not the Antonio Guevara, a native of the Philippine Islands, whom he is represented to be, appearing to be proper and sustained by the evidence and all the facts and circumstances of the case, as shown by the record of the proceedings; the said Antonio Guevara is therefore refused landing, and it is hereby ordered that he be returned to his port of embarkation, on the next sailing of the vessel that brought him to the Philippine Islands or another vessel of the same line."

On the 2d of October, 1916, the plaintiff, through his attorney, presented a petition for the writ of habeas corpus in the Court of First Instance of the city of Manila, alleging that he was being illegally held and deprived of his liberty by the Collector of Customs at the city of Manila. Upon the presentation of said petition, an order to show cause was issued upon respondent. An answer was duly presented by the respondent, through the Attorney-General, on the 4th of October, 1915.

Upon the issue presented by the petition and answer, and the record made by the Collector of Customs, the question was submitted to the Honorable George R. Harvey, judge, who, in a very carefully prepared opinion, reached the conclusion that there had been no abuse of discretion on the part of the immigration authorities, denied the petition for the writ of habeas corpus, and remanded the petitioner to the custody of the Insular Collector of Customs, with costs against the said petitioner.

From that decision the petitioner appealed to this court and made the following assignments of error.

"The lower court erred:

"1. When it overruled appellant's motion to strike from the files the return of the respondent to the order to show cause why the writ should not issue.

"2. When it found that the board which heard the matter at the custom house was a legal board and lawfully qualified to hear and determine the right of this appellant to enter the Philippine Islands.

"3. When it found that there was any legal evidence upon which the conclusions of the board could be lawfully based.

"4. When it did not find that the board and the Insular Collector of Customs had abused the discretion, power, and authority in them reposed when they refused this appellant a landing in the Philippine Islands.

"5. When it did not find that the decision of the board and of the Insular Collector of Customs, on appeal therefrom, were based upon an erroneous interpretation of the law and, therefore, null and void.

"6. When it did not examine the record and the testimony taken at the customhouse and tender a decision thereon instead of contenting itself with a finding that there was no abuse of authority on the part of the immigration authorities.

"7. When it did not find that the Insular Collector of Customs and the immigration authorities had abused the discretion, power, and authority in them reposed, when the said Insular Collector of Customs rendered his decision on appeal herein without having seen all of the testimony introduced before the board of special inquiry, and upon which the said board based its decision.

"8. When it refused to issue the writ.

"9. When it found Antonio Guevara not entitled to enter the Philippine Islands.

"10. When it remanded Antonio Guevara to the Insular Collector of Customs for deportation."

With reference to the first and second assignments of error, the questions presented by them have been so frequently decided by this court against the contention of the appellant that we deem it unnecessary to discuss them again. (*Lee Jua vs. Collector of Customs*, 32 Phil. Rep., 24 and cases cited; *Chiang Ah Sui vs. Collector of Customs*, 22 Phil. Rep., 361; [239 U. S. (139)] decision of the Supreme Court of the United States, November 29, 1915.)

With reference to the third assignment of error it may be said that, considering the conflicting character of the evidence adduced during the trial of the cause together with the personal appearance of the plaintiff, we are of the opinion that the board had sufficient evidence before it to justify its conclusion. In a proceeding for deportation under the Chinese Exclusion Act, upon the issue as to whether the person seeking admission into territory of the United States is a person of the Chinese race, his appearance may be taken into consideration by the commissioner or judge, and persons who state that, from practical experience and knowledge of racial characteristics and peculiarities, they are able to identify Chinese persons are competent witnesses. (*U. S. vs. Hing Chang*, C. C. A., 19.) Proceedings for the deportation of a Chinese person, under the Deportation Act, are civil and not criminal actions, and the laws of evidence pertaining to civil actions govern.

The plaintiff claimed that he was the son of a Filipina woman and a Chinese father. The plaintiff swore that he was born in the Philippine Islands in the municipality of Malabon (See Exhibit A, page 18), while the mother swore positively that the plaintiff was not born in the Philippine Islands. (See Exhibit A, page 21.) The board of special inquiry expressly found that the plaintiff had the appearance of being a full-blood Chinese person.

What has been said with reference to the third assignment of error is sufficient to show, in view of the numerous decisions not only of this court but of the Federal Courts of the United States, that there exists no reason for modifying the decision of the lower court upon the grounds assigned in the fourth and fifth assignments of error.

With reference to the sixth assignment of error, the court was justified in denying the writ of habeas corpus until it had been shown positively that the department of customs had abused its authority.

With reference to the seventh assignment of error, it may be said that there is no law requiring the proof to be adduced before the Collector of Customs. It is the duty of the board of special inquiry to make an investigation and to hear whatever proof the parties desire to present. It is sufficient if the Collector of Customs makes a review of the testimony presented to the board of special inquiry. He is not obliged to see or hear the witnesses. The law provides that an appeal from the decision of the board of special inquiry may be taken to the Collector of Customs. While, no doubt, the Collector of Customs might, if he deemed it advisable, hear the proof himself, yet it is sufficient if he makes an examination of the evidence adduced before the board of special inquiry. The law does not require him to see or hear the witnesses. His jurisdiction is an appellate jurisdiction.

The appellant seems to assume that, because he would have reached a different conclusion from the evidence adduced, therefore the Collector of Customs committed an error in not admitting him into the territory of the Philippine Islands. A mere refusal on the part of the Collector of Customs to believe even the sworn statements of witnesses, in Chinese exclusion cases, is no error. Taking into consideration the conflict between the declarations of the various witnesses, especially between the declarations of the plaintiff and his alleged mother, it is our opinion that the Collector of Customs in this case especially was justified in not believing the testimony of the appellant or that of his mother. A mere refusal by the proper authorities to allow an alien to enter territory of the United States is not an abuse of authority. The courts can not review the weight or admissibility of the evidence on the question whether an alien was unlawfully in the country, and a decision to that effect by the department of customs, supported by any evidence, is conclusive. (Ex parte Chin Hin, 227 Fed. Rep., 131.) A Chinese person claiming to have been born within the territory of the United States has the burden of proof to establish such fact to the satisfaction of the department of customs. The burden is upon a Chinese person who claims to be a citizen of the United States, or of its territories, to show, by affirmative proof, that he was born within said territory. (U. S. vs. Horn Lim, 223 Fed. Rep., 520; Fong Ping Ngar vs. U. S., 223 Fed. Rep., 523.) The law permits the examining officers or board to examine the applicant for admission, and such other witnesses as may be presented, and to decide upon such testimony whether or not the applicant is entitled to enter. Authority to examine into the facts implies the discretion to decide and, unless it is clearly proved that the discretion was abused, the courts will refuse to take jurisdiction for the purpose of determining the question of the right of an alien to enter the territory of the United States. (Tan Chin Hin vs. Collector of Customs, 27 Phil. Rep., 521.)

The Honorable George R. Harvey, judge, in a very carefully prepared opinion, after a careful examination of the evidence adduced before the Collector of Customs, reached the conclusion that the department of customs had not abused the discretion and power vested in it by the law, and denied the petition for the writ of habeas corpus, and remanded the petitioner to the custody of the Collector of Customs for deportation.

After a careful examination of the record brought to this court, we find no reason for changing or modifying the sentence of the lower court. The same is therefore hereby affirmed, with costs. So ordered.

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

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