

TAN ME NIO, PLAINTIFF AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.

G.R. No. 11463. September 18, 1916

Ponente: JOHNSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-11463/>

JOHNSON, J.:

The only question presented by this appeal is whether or not the mother-in-law of a resident Chinese merchant of the Philippine Islands is entitled to enter territory of the United States without the "section six certificate."

The petitioner was denied the right to enter the Philippine Islands by the department of customs. Later a petition was presented in the Court of First Instance for the writ of habeas corpus. The Honorable Simplicio Del Rosario, judge, after considering said petition and the answer presented by the Attorney-General, reached the conclusion that there had been no abuse of authority on the part of the department of customs and therefore denied the writ of habeas corpus and affirmed the order of deportation of the department of customs. From that judgment the plaintiff appealed to this court

An examination of the brief presented by the appellant fails to disclose any specific assignments of error. The argument of the appellant however attempts to show that the lower court committed an error in not admitting the petitioner under the laws of the United States and the treaties between the United States and China, and cites certain provisions of the Civil Code for the purpose of showing that the petitioner had a right to enter territory of the United States. To determine what questions are presented to the court we are compelled to consult the brief presented by the Attorney-General. In his brief three questions are discussed which, he claims, are involved in the appeal: First, whether or not a person who is enjoying his liberty under bail is entitled to the writ of habeas corpus; second, whether or not the mother-in-law of a resident Chinese merchant has a right, upon that account alone, to enter territory of the United States; third, the effect of the failure of an appellant to make assignments of error.

While the record made by the department of customs was not brought to this court, from a reading of the brief of the appellant in relation with that of the Attorney-General, the facts upon which the petitioner is seeking: to enter the Philippine Islands may be stated as follows: first, that she is a subject or citizen of the Chinese Republic; second, that she claims the right to enter the Philippine Islands by reason of the fact that she is the mother-in-law of a resident Chinese merchant of the Philippine Islands.

Before we discuss the principal question involved we deem it advisable to call the attention of the appellant to the fact that she has failed to present, as a part of the record of the cause, the evidence adduced in the department of customs. In view of the numerous decisions that the courts are without right or authority or discretion to consider the question of the right of a Chinese alien to enter territory of the United States until it has first determined that the department of customs abused its power, discretion or authority, it is certainly necessary for the petitioner for the writ of habeas corpus, in cases like the present, to present to the court the record made by the department of customs in order that the court may, in the first instance, determine whether such abuse of authority existed. In the

present case that record was not presented to the Court of First Instance. (Ex parte Yabucanin, 199 Fed. Rep., 365; Craemer vs. Washington, 168 U. S., 124; Low Wah Suey vs. Backus, as Commissioner of Immigration, 225 U. S., 460.)

Until it affirmatively appears from the record that the department of customs abused its power or authority in denying Chinese aliens the right to enter territory of the United States, the courts can not take jurisdiction. (U. S. vs. Ju Toy, 198 U. S., 253; Chin Low vs. United States, 208 U. S., 8; Tang Tun vs. Edsell, 223 U. S., 673.) In support of the allegation of the petitioner, he should, as evidence of good faith, present the evidence taken by the department of customs because by that evidence alone can he show that there was an abuse of authority. (Low Wah Suey vs. Backus, supra; Ex parte Yabucanin, supra.)

The lower court should have denied the petition, in the absence of an agreement of the parties as to the facts. The lower court should have dismissed the petition for the of habeas corpus for the reason that the petitioner failed to present the evidence taken in the department of customs.

It appears from the brief of the Attorney-General that the petitioner was, at the time of the presentation of her petition, enjoying her liberty by reason of having been admitted to bail. The writ of habeas corpus is the remedy for one who is illegally imprisoned. No rule is better established and better known than that the writ of habeas corpus will not issue in behalf of a person not actually restrained of his liberty. Church, in his valuable work on Habeas Corpus, says:

"A person discharged on bail is not imprisoned or restrained of his liberty in such a way as to entitle him to the writ of habeas corpus, directed to his bail."

An examination of vol. 21, page 289 of Cyc. will show that a long list of cases may be cited in support of the proposition that:

"Persons discharged on bail are not restrained of their liberty so as to be entitled to discharge on habeas corpus, but upon their surrender to proper officers by their sureties it has been held that habeas corpus will lie."

Upon the second question contained in the briefs presented, to wit, the right of the mother-in-law of a resident Chinese merchant to enter territory of the United States, it may be said that in the case of Ty Buan vs. Collector of Customs (ante, p. 937) this court held that she was not entitled to enter territory of the United States without the "section six certificate." There is nothing in the record in the present case to justify us in changing or modifying the conclusion reached in that case.

With reference to the failure of the appellant to make specific assignments of error, it may be said that Rule 19 of the Supreme Court requires that there must be "prefixed to the brief of the appellant, but stated separately, the assignments of error intended to be urged. Each specification of error shall be separately, distinctly, and concisely stated, without repetition, and they shall be numbered consecutively."

Rule 20 provides that:

"No error not affecting the jurisdiction over the subject-matter will be considered, unless stated in the assignment of errors and relied upon in the brief."

If, then, no errors will be considered unless they are specifically assigned, certainly if none are assigned, no question can be considered.

In view of the foregoing we are of the opinion, and so hold, that the judgment of the lower court should be affirmed, with costs. Therefore let a decree be issued affirming the judgment of the lower court and that the petitioner be returned to the department of customs in order that the order heretofore dictated by said department

may be executed. So ordered.

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

Moreland, J., concurs in the result.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.