

NG HIAN, PETITIONER AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.

G.R. No. 11467. March 15, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was commenced in the Court of First Instance of the city of Manila on the 26th of November, 1915, by the presentation of a petition for the writ of habeas corpus.

From an examination of the record the following facts appear to be proved beyond question:

First. That on or about the 30th of October, 1915 on the steamship Tian there arrived at the port of Manila, a woman, Marcosa S. Dy Jiongco, together with two children, Ng Tio a female of the age of 9 years, and Ng Hian a boy of 16 years of age (the petitioner herein);

Second. That Marcosa S. Dy Jiongco had been born in the Philippine Islands, of a Filipina mother and a Chinese father;

Third. That Marcosa S. Dy Jiongco was married to a Chinaman by the name of (Filipino name) Juan Uy Tue, (Chinese name) Ng Chion Tue;

Fourth. That Juan Uy Tue (Ng Chion Tue), before his marriage with Marcosa S. Dy Jiongco, had been married to a Chinese woman with whom he had had some children, the petitioner herein and also one called Ng Guan. It appears that Ng Guan was residing in the Philippine Islands at the time of the presentation of the present petition;

Fifth. That the Chinese wife of Juan Uy Tue died while the petitioner herein, Ng Hian, was a very small child;

Sixth. That the said Juan Uy Tue, after the death of his Chinese wife, was legally married to the said Marcosa S. Dy Jiongco;

Seventh. That the said little girl, Ng Tio, of 9 years of age was the daughter of the brother of the said Juan Uy Tue, born of a Chinese father and mother; that the father of the little girl had given her to the said Marcosa S. Dy Jiongco;

Eighth. That Marcosa S. Dy Jiongco, being the step-mother of the said Ng Hian, adopted him and was bringing him to the Philippine Islands to study.

After the close of the investigation before the board of special inquiry, during which examination the foregoing facts were presented, the said board refused the right of each of said children to enter the Philippine Islands.

Later, on the 17th of November, 1915, a rehearing was granted for the purpose of examining other witnesses upon the question of the right of said two children, Ng Tio and Ng Hian, to enter the Philippine Islands. At the close of the second hearing the board of special inquiry admitted Ng Tio, but denied the right of Ng Hian to enter the Philippine Islands. From that decision an appeal was taken to the Collector of Customs and by him affirmed on

the 23d of November, 1915. The petition for the writ of habeas corpus in the present case was presented on the 26th of November, 1915.

The petition and answer and the record made in the department of customs were presented to the Court of First Instance. The court, after an examination of the record, reached the conclusion that the petitioner (Ng Hian) was entitled to enter the Philippine Islands. From that decision the Collector of Customs appealed to this court. The question which the Attorney-General presents is whether or not the minor children of a deceased resident Chinese merchant have a right to enter the territory of the Philippine Islands. That question has been answered by this court in numerous decisions in the negative. (Lee Jua vs. Collector of Customs, 32 Phil. Rep., 24; Tan Lin Jo vs. Collector of Customs, 32 Phil. Rep., 78; Cang Kai Guan vs. Collector of Customs, 32 Phil. Rep., 102; Yap Tian Un (Sun) vs. Collector of Customs, 32 Phil. Rep., 487; Du Eng Hoa vs. Collector of Customs, 32 Phil. Rep., 490; Ex parte Chan Fooi, 217 Fed. Rep., 308.)

It is true that the petitioner, Ng Hian, had never been in the Philippine Islands before. It is also true that the said Marcosa S. Dy Jiongco was his stepmother. She swore positively that she had adopted him. That fact is not denied of record. Until the fact is denied we must accept it. There is nothing in the record which shows or tends to show that she had not adopted him in good faith. The question whether or not Marcosa S. Dy Jiongco could bring Ng Hian into the territory of the Philippine Islands as her adopted son has been discussed by the Federal Courts of the United States. In the case of Ex parte Fong Yim (134 Fed. Rep., 938), the court held that:

"A Chinese merchant domiciled in the United States has the right to bring into this country with his wife minor children legally adopted by him in China, where it is shown that the adoption was bona fide, and that the children have lived as members of his family and have been supported by him for several years."

The court further said:

"Of course, the question whether the adoption is a genuine one is a question of fact, open to investigation. * * * The evidence shows that the practice of adopting children in China is very common, that it takes place substantially without legal formalities, but that the rights and obligations of children adopted and recognized as such are similar to those of natural children. Under these circumstances I can see no difference between the legal status of adopted children and of natural children. The Supreme Court (of the United States) having decided that a Chinese merchant domiciled in this country has the right to bring into it his natural children, I think that the same decision is authority for the proposition that he has the right to introduce his adopted children."

Upon the theory, therefore, that Ng Hian had been adopted by his stepmother, and upon the theory that she has a right to enter territory of the United States, without objection, we are of the opinion and so hold that Ng Hian has a right to enter the territory of the Philippine Islands as her adopted son. Therefore the judgment of the lower court is hereby affirmed, with costs. So ordered.

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

Moreland, J., reserved his vote.

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