

CAYETANO LIM AND MARCIANO LIM, PETITIONERS AND APPELLANTS, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLEE.

G.R. No. 11759, March 16, 1917

Ponente: CARSON, J.

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CARSON, J.:

The real question raised on this appeal is whether the Insular Collector of Customs may lawfully deny entry into the Philippine Islands to two children aged 8 and 14 years, respectively, under and by authority of the Chinese Immigration Laws, it appearing that the children arrived at the Port of Manila accompanied by and in the custody of their mother, a Filipino woman; that they were born in China, out of lawful wedlock; and that their father was a Chinese person.

It is contended, on behalf of the Insular Collector of Customs, that these children being Chinese persons are denied the right of entrance into the Philippine Islands under the express terms of the Chinese immigration laws. On the other hand, it is urged on behalf of the children that they are entitled to enter, regardless of the provisions of the Chinese immigration laws, since the admitted facts, as it is said, disclose that they are citizens of the Philippine Islands; and for the further reason, that their mother, who is entitled to their custody and charged with their maintenance and education, is clearly entitled to take up her residence in the Philippine Islands and should not be required, to that end, to abandon her minor children.

Without discussing or deciding any of the contentions of the parties as to the rights of citizenship of these children, actual or inchoate, we are of opinion that by analogous reasoning to that upon which the Supreme Court of the United States held that the wives and minor children of Chinese merchants domiciled in the United States may enter that country without certificates, these children must be held to be entitled to enter the Philippine Islands with their mother, for the purpose of taking up their residence here with her, it appearing that she is their natural guardian, entitled to their custody and charged with their maintenance and education. (U. S. vs. Gue Lim, 176 U. S., 459.)

In the case just cited the court said:

"While the literal construction of the section would require a certificate, as therein stated, from every Chinese person, other than a laborer, who should come into the country, yet such a construction leads to what we think an absurd result, for it requires a certificate for a wife of a merchant, among others, in regard to whom it would be impossible to give the particulars which the statute requires shall be stated in such certificate.

" 'Nothing is better settled,' says the present Chief Justice, in *Lau Ow Bew vs. United States* (144 U. S., 59) 'than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion/

"The purpose of the sixth section, requiring the certificate, was not to prevent the persons named in the second article of the treaty from coming into the country, but to prevent Chinese laborers from entering under the

guise of being one of the classes permitted by the treaty. It is the coming of Chinese laborers that the act is aimed against.

"It was said in the opinion in the *Lau Ow Bew* case, in speaking of the provision that the sole evidence permissible should be the certificate: 'This rule of evidence was evidently prescribed by the amendment as a means of effectually preventing the violation or evasion of the prohibition against the coming of Chinese laborers. It was designed as a safeguard to prevent the unlawful entry of such laborers, under the pretence that they belong to the merchant class or to some other of the admitted classes.'

"It was also held in that case that although the literal wording of the statute of 1884, section six, would require a certificate in the case of a merchant already domiciled in the United States and who had left the country for temporary purposes, *animo revertendi*, yet its true and proper construction did not include his case, and the general terms used in the act were limited to those persons to whom Congress manifestly intended to apply them, which would be those who were about to come to the United States for the first time, and not to those Chinese merchants already domiciled in the United States who had gone to China for temporary purposes only, with the intention of returning. The case of *Wan Shing vs. United States* (140 U. S., 424), was referred to, and attention called to the fact that the appellant therein was not a merchant but a laborer, who had acquired no commercial domicile in this country, and was clearly within the exception requiring him to procure and produce the certificate specified in the act. The ruling was approved, and the differences in the two cases pointed out by the Chief Justice.

"To hold that a certificate is required in this case is to decide that the woman cannot come into this country at all, for it is not possible for her to comply with the act, because she cannot in any event procure the certificate even by returning to China. She must come in as the wife of her domiciled husband or not at all. The act was never meant to accomplish the result of permanently excluding the wife under the circumstances of this case, and we think that, properly and reasonably construed, it does not do so. If we hold that she is entitled to come in as the wife, because the true construction of the treaty and the act permits it, there is no provision which makes the certificate the only proof of the fact that she is such wife.

"In the case of the minor children, the same result must follow as in that of the wife. All the reasons which favor the construction of the statute as exempting the wife from the necessity of procuring a certificate apply with equal force to the case of minor children of a member or members of the admitted classes. They come in by reason of their relationship to the father, and whether they accompany or follow him, a certificate is not necessary in either case. When the fact is established to the satisfaction of the authorities that the person claiming to enter, either as wife or minor child, is in fact the wife or minor child of one of the members of the class mentioned in the treaty as entitled to enter, then that person is entitled to admission without the certificate."

We are not advised of any provision of Chinese law which differentiates the status of infant children, born out of lawful wedlock, from that of similar children under the laws in force in the Philippine Islands. We assume, therefore, that in China as well as in the Philippine Islands such children have the right to look to their mother for their maintenance and education, and that she is entitled to their custody and control in fulfilling the obligations towards them which are imposed upon her, not only by the natural impulses of love and affection, but also by the express mandate of the law. And it having been held on the highest authority that the general terms of the Act were limited to those to whom Congress manifestly intended to apply them as set forth in the foregoing opinion, and that "nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion," we are of opinion that the Chinese Immigration Laws should not be construed so as to exclude infant children of a Filipino mother, born out of lawful wedlock, seeking entrance to the Philippine Islands for the purpose of taking up their residence with her in her native land.

It has been suggested that such a ruling opens the door to fraud and evasion, but we are not much impressed with the force of this suggestion, knowing as we do that the immigration authorities have been furnished by the law with peculiarly effective machinery for its enforcement, well calculated to defeat any attempt to make an unauthorized or improper use of so manifestly reasonable an exception from the literal construction and application of its general provisions.

Some confusion seems to have arisen in the court below as to the precise nature and effect of the somewhat inartificial pleadings upon which these proceedings were submitted. The case appears to have been submitted upon an answer to an order to show cause why a writ of habeas corpus should not issue upon the petition filed on behalf of the infant children. In the form in which the answer is couched, there is much in the contention of the appellee that the trial court should have treated the answer as in substance and effect a demurrer to the petition, admitting the truth of the facts alleged therein, but praying judgment as to whether it sets forth facts sufficient to constitute a cause of action and to justify the issuance of the writ. We are inclined to think, however, that the understanding of the parties and of the court below was that the answer should be treated rather as in the nature of a return to a writ of habeas corpus, accepting as true the allegations of the petition but maintaining the legality of the detention upon the facts thus submitted. Without considering at this time whether in habeas corpus proceedings the respondent may, without consent of court, demur to, instead of answering an order to show cause why the writ should not issue, and without considering or deciding the course which should be pursued where a respondent attempts to file a demurrer to a petition for a writ of habeas corpus in lieu of the return prescribed by the statute to the writ when actually issued; we treat the answer to the order to show cause in the case at bar as we think the parties and the court below understood it should be treated, that is to say, as in substance and effect the return which the Insular Collector desired to make to the writ of habeas corpus issued or assumed to have been issued in response to the petition on behalf of the children held in custody by him.

We conclude, therefore, that, it appearing that the respondent Collector of Customs is detaining the petitioners under an erroneous construction of the immigration laws, and it appearing from the facts disclosed by the administrative proceedings that these children are entitled to admission into the Philippine Islands, the order entered in the court below should be reversed, and in lieu thereof an order should be entered directing the discharge of these children from the custody of the Insular Collector of Customs, with the costs in both instances, de officio. So ordered.

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

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