

JAO QUIM CHO, PLAINTIFF AND APPELLANT, VS. THE COLLECTOR OF CUSTOMS OF THE CITY OF CEBU, DEFENDANT AND APPELLEE.

G.R. No. 12016. November 17, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

The question presented by this appeal is whether or not a minor son of a resident Chinese merchant, who has been legally admitted into the Philippine Islands, may enter again after a temporary absence abroad and while his parents are temporarily absent from the Philippine Islands.

From the record made by the department of customs of the city of Cebu it appears that the appellant herein is the son of a Chinese merchant; that he is eighteen years of age; that his father was a merchant residing in the Philippine Islands, but had gone to China on account of sickness; that the appellant had resided in the Philippine Islands with his parents; that he had been admitted into the Philippine Islands as the minor son of a resident Chinese merchant; that in 1911 he returned to China to pay a visit, with the intention of returning; that before he left the Philippine Islands in 1911, he went to the collector of customs for the purpose of getting a certificate and was informed that inasmuch as he was a minor, it was not necessary for him to obtain the same; that his father intended to return to the Philippine Islands when he recovered his health; that his father had been given a certificate of residence by the department of customs. Upon these facts he asked permission to enter the Philippine Islands as the minor son of a resident Chinese merchant.

Upon said facts the collector of customs of the city of Cebu denied the appellant the right to enter the Philippine Islands. Later a petition for the writ of habeas corpus was presented in the Court of First Instance of the Province of Cebu. Upon a consideration of said petition and the return thereto, the lower court confirmed the decision of the department of customs and ordered the appellant deported. From that decision he appealed to this court.

The fact is not denied that the appellant is a minor and the son of a resident Chinese merchant who was temporarily absent from the Philippine Islands; that he was permitted to enter the Philippine Islands as the minor son of a resident Chinese merchant; that after having been legally admitted into the Philippine Islands he returned to China temporarily for a visit; that he made application to the department of customs at the time of his return to China for the proper certificate and was informed that said certificate was not necessary, by reason of the fact that he was a minor and the son of a resident Chinese merchant. It is not denied that his father had gone to China for a temporary visit on account of sickness and that he intended to return to the Philippine Islands when cured of his sickness. The appellant having been once legally admitted into the Philippine Islands as the minor son of a resident Chinese merchant can not be deported. (U. S. vs. Tan Chuy Ho, 31 Phil. Rep., 383; U. S. vs. Foo Duck, 172 Fed. Rep., 856; U. S. vs. Yee Quong Yuen, 191 Fed. Rep., 28; U. S. vs. Lin Yuen, 211 Fed. Rep., 1001; Ex parte Lew Lin Shew, 217 Fed. Rep., 317.) Minor children of a resident Chinese merchant are permitted to enter territory of the United States without the "section six certificate." The appellant herein was still a minor; his father was a resident Chinese merchant; and at the time the appellant was seeking to enter, his father was temporarily absent from the Philippine Islands, with the intention of returning. No claim is made that the father might not

return to the Philippine Islands at any time without objection. He had been given a Chinese resident certificate. The appellant having been legally admitted into the Islands without the necessity of presenting the "section six certificate," we are of the opinion that he stands upon exactly the same footing as any other alien who may enter the Philippine Islands with or without the "section six certificate" and that he may enter and remain therein and may not be deported simply because his father, who has a right to return and to remain, is temporarily absent at the time he seeks the right to be admitted. (U. S. vs. Li Sui Wun, 32 Phil. Rep., 151; U. S. vs. Lee You Wing, 208 Fed. Rep., 166; In re Tam Chung, 223 Fed. Rep., 801; Lee Jua vs. Collector of Customs, 32 Phil. Rep., 24; Ang Qua Shi vs. Collector of Customs, R. G. No. 8805, March 25, 1914, not published; Gan Bun Cho vs. Collector of Customs, 30 Phil. Rep., 614; U. S. vs. Lim Kiu Eng 31 Phil. Rep., 115.) The wife and minor children of a resident Chinese merchant may enter territory of the United States without presenting the "section six certificate." In the case of United States vs. Li Sui Wun (32 Phil. Rep., 151), it was held that when a Chinese person is lawfully admitted into territory of the United States, he may thereafter come and go, of his own free will, the same as aliens of any other country who may enter territory of the United States. The wife and minor children of a resident Chinese merchant being able to enter territory of the United States without the "section six certificate," they enjoy the same privilege of entering and departing which Chinese persons enjoy who present the "section six certificate." (U. S. vs. Li Sui Wun, supra.)

If the proof adduced during the hearing shows that the appellant had a right to enter the Philippine Islands, it was an abuse of authority, power, and discretion for the department of customs to refuse him that right. In our opinion, the proof adduced, and not denied, clearly shows that the appellant was entitled to enter territory of the United States. (Ang Eng Chong vs. Collector of Customs. 23 Phil. Rep., 614; U. S. vs. Go-Siaco, 12 Phil. Rep., 490; Munoz vs. Collector of Customs, 20 Phil Rep., 494; U. S. vs. Yu Kiao, 20 Phil. Rep., 307; U. S. vs. Gue Lim, 176 U. S.. 459; 83 Fed. Rep., 136; Vano Vy Tat Tong vs. Collector of Customs, 23 Phil. Rep., 480.)

The Chinese Exclusion Law can not be invoked for the purpose of keeping out of the Philippine Islands persons who have a right, under the law, to enter, nor for the purpose or" preventing actual bona fide residents of said Islands from entering. It is an abuse of authority on the part of the Insular Collector of Customs to apply said exclusion law to said persons. (Ang Eng Chong m. Collector of Customs, supra; Ang Qua Shi vs. Insular Collector of Customs, R. G. No. 8805, supra.)

In the case last-quoted we held:

"That a wife of a resident Chinese merchant and her minor children, who had been admitted into territory of the United States and who had resided therein for a number of years, had a right to return to the Philippine Islands, after a temporary visit to China, whither they had gone with the idea of returning to the Philippine Islands, with the husband and father, notwithstanding the fact that the father had died in China during said temporary visit."

When a Chinese person has once been lawfully admitted into territory of the United States, upon a "section six certificate," he may thereafter come and go of his own free will. This rule is applicable to the wife and minor children of a resident Chinese merchant who may enter territory of the United States without the "section six certificate."

The Attorney-General, in a carefully prepared opinion and relying upon the decision hereinbefore cited, recommends that the judgment of the lower court ordering the appellant deported be revoked and that he be permitted to enter the Philippine Islands. With that recommendation of the Attorney-General we fully agree.

Therefore the judgment of the lower court is hereby revoked and it is hereby ordered and decreed that the appellant be permitted to enter the Philippine Islands, and without any finding as to costs, it is so ordered.

Torres, Carson, and Araullo, JJ., concur.

Trent, J., reserves his vote.

Moreland, J., see dissenting opinion.

DISSENTING OPINION

MORELAND, J.:

I dissent. I do not agree to the finding of fact that the father of the applicant left the Islands with intention of returning. There is no evidence of that fact except the statement of the applicant, which I regard, under the circumstances of this case, as verging on hearsay. An absence of five years from the Islands of an alien Chinaman, unexplained except by the statement of another, is evidence in support of the finding of the board of special inquiry that there was no intention to return, and that for that reason he lost his right to reenter or reside in the Philippine Islands.

The foundation of the right of a minor son of a resident Chinese merchant to enter the Philippine Islands is the natural right of children to be with the father and the right of the father to their society and the right of control. That foundation disappears, and with it the right of both father and son, when the father is, at the time the minor seeks entry, in China without right to return to the Philippine Islands.

The order refusing entry is correct.

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