

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LIM BIN (ALIAS) FERMIN V. C. BIO GUAN, DEFENDANT AND APPELLANT.*G.R. No. 12690. September 27, 1917*

Ponente: JOHNSON, J.

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The only question presented by this appeal is whether the son of Chinese parents, who was born in the Philippine Islands in the year 1882, and who has lived continuously therein since 1898, can be deported, as a Chinese laborer, for having failed to register under the provisions of Act No. 702.

The undisputed facts of the record show; that the appellant was born in the city of Manila in the month of July, 1882; that his father and mother were Chinese; that he, together with his parents, went to China when he was five or six years of age; that he returned to Manila in the year 1898; that he returned to Manila for the purpose of making the Philippine Islands his home; that he has continued to live in the city of Manila since his return; that having been born in the Philippine Islands he considered that he was a citizen thereof.

The Government presented no proof to contradict the foregoing facts; and the Attorney-General in this court renounced his right to present a brief. He renounced his right to present arguments in support of the contention of the Government.

When the appellant returned to the Philippine Islands in 1898, he was a minor and was still a minor on the 27th day of March, 1903, when Act No. 702 was adopted. Furthermore, he was yet a minor at the termination of the year within which Chinese aliens were required to register under the provisions of said Act. He had established his residence in the Philippine Islands on the 11th day of April, 1899, when, by virtue of the Treaty, of Paris, the Philippine archipelago became territory of the Government of the United States. He was less than seventeen years of age when the Treaty of Paris was concluded. At the termination of the period within which he was required to register under Act No. 702 he was less than twenty-one years of age. Under the laws in force at that time he did not reach his majority until the month of July, 1905.

By virtue of the provisions of the Fourteenth Amendment to the Constitution of the United States all persons born within the United States, if they so elect, are citizens thereof, except children born of parents in the diplomatic service. If, therefore, he had been born in the United States as above indicated, he would have been a citizen thereof. (U. S. vs. Wong Kim Ark, 169 U. S., 649, 676, 682, 693, and other cases therein cited.)

Having been born within the Philippine Islands, and having adopted the same as his home prior to the acquisition of said territory by the Government of the United States, we do not believe that it was the intention of Congress, or of the Legislature of the Philippine Islands, to require him, or any other person in his class and in his condition, to register under said Act No. 702, as an alien. While this conclusion may be in conflict with the political laws in force here under the Spanish sovereignty, we believe that it is in harmony with the spirit of the law of the United States. (Boyd vs. Thayer, 143 U. S., 135, 157, 181; U. S. vs. Go-Siaco, 12 Phil. Rep., 490; Munoz vs. Collector of Customs, 20 Phil. Rep., 494; Roa vs. Collector of Customs, 23 Phil. Rep., 315; Vano Uy Tat Tong vs. Collector of

Customs, 23 Phil. Rep., 480; U. S. vs. Ong Tianse, 29 Phil. Rep., 332.)

Neither do we believe that it was the intention of the Legislature to require minors to register in accordance with the provisions of Act No. 702. (U. S. vs. Tan Chuy Ho, 31 Phil. Rep., 383.)

Having reached the conclusion that the appellant was not required, under the provisions of said Act No. 702, to register in order to remain in the Philippine Islands, he cannot be deported for his failure so to do.

Therefore, the judgment of the lower court is hereby revoked; the complaint presented against the defendant is hereby dismissed; and it is hereby ordered and decreed that he be set at liberty, and without any finding as to costs. So ordered.

Arellano, C. J., Araullo, and Street, JJ., concur.

CARSON, J., concurring:

I concur with the disposition of this case.

MALCOLM, J., concurring:

I agree in substance with the decision of the court. I can, however, see how the facts permit of a different line of reasoning leading to the same conclusion. I prefer an unequivocal ruling as to the status of children born of Chinese parents in the Philippines.

I think these rules are clear—(1) If a child was born of Chinese parents in the Philippines prior to the extension of the Spanish Civil Code to the Islands, the citizenship of the child is determined by the laws then in force in the Philippines, naming especially the Royal Decree of November 17, 1852, the law of September 18, 1870, and Law 3, title 11, book 6 of the Novisima Recopilacion; (2) If a child was born of Chinese parents in the Philippines subsequent to the extension of the Spanish Civil Code to the Islands but prior to acquisition of the Philippines by the United States, the citizenship of the child is determined by the provisions of the Civil Code; (3) If a child was born of Chinese parents in the Philippines after acquisition of the Islands by the United States, the citizenship of the child is determined by the American law of citizenship, naming especially the Fourteenth Amendment to the United States Constitution and the leading construction of the United States Supreme Court in the case of U. S. vs. Wong Kim Ark ([1897], 169 U.S., 649.)

The facts of the present case fall under rule 1. The parents of Lim Bin under the Spanish law were considered as Spanish subjects. (Laws cited supra; decisions of the supreme court of Spain of November 14, 1859, and of August 29, 1861; Sy Joe Lieng vs. Sy Quia [1910], 16 Phil., 137, affirmed by the United States Supreme Court, 228 U. S., 335; ruling of the United States Department of State on the Jose Velasco Chua Chienco application for a passport, September 11, 1911.) The citizenship of the child followed that of his parents (father). (Citations supra.) The father, if then alive, appears not to have taken advantage of the provisions of the Treaty of Paris, so that both he and the child became citizens of the Philippine Islands. (In re Arnaiz [1906], 9 Phil., 705.) Chinese descent did not change Lin Bin's status. (Vaño vs. Collector of Customs [1912], 23 Phil., 480.) On attaining majority it is possible he could choose his citizenship, which he has done by claiming to be a citizen of the Philippine Islands. (Roa vs. Collector of Customs [1912], 23 Phil., 315.)

If a citizen of the Philippine Islands, obviously Lim Bin does not come within the purview of Act No. 702 relating to the registration of Chinese laborers and cannot therefore be deported from the Philippine Islands.

"The Chinese Exclusion Law can not be invoked for the purpose of keeping out of the Philippine Islands actual bona fide citizens of said Islands." (Vaño vs. Collector of Customs, supra.)

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