

DY KENG, PLAINTIFF AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLANT.

G.R. No. 13640. September 16, 1919

Ponente: JOHNSON, J.

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JOHNSON, J.:

A petition for the writ of habeas corpus was presented to the Court of First Instance of the city of Manila on the 28th day of December, 1917. Upon a consideration of the facts the Honorable George R. Harvey, judge, granted the petition and ordered the petitioner discharged from the custody of the law. From that decision the Attorney-General appealed. The Attorney-General alleges that the lower court committed an error "in reversing the decision of the respondent and in permitting the petitioner to enter the Philippine Islands as the minor son of a resident Chinese merchant."

The Attorney-General, in concluding his brief, says: "The decision of the lower court, appearing to be based upon sound reasoning and good judgment, but appearing to provide limitations to several decisions of this court, is respectfully submitted so that this court may, if it see fit, either approve or reject the principles enunciated therein.

The facts, as they are disclosed by the record, may be stated as follows:

- That on the 10th day of November, 1917, the appellee, Dy Keng, arrived at the port of Manila on the steamship Yuengsang, and asked permission to land in the Philippine Islands as the minor son of one Dy Soco, a resident merchant in the Philippine Islands.
- An examination was held by the board of special inquiry of the Department of Customs and several witnesses were examined upon the question of the right of the said Dy Keng to enter the Philippine Islands.
- An examination of the record shows that the only question presented to the board of special inquiry was that relating to the age of the appellee—whether he was a minor or not.
- That five witnesses were presented to the board of special inquiry; that each of said witnesses, including the appellee and his father, swore positively and apparently without reservation or attempted evasion, that the appellee was about 20 years of age. No proof whatever was adduced disputing or even tending to dispute the positive statements of each of said witnesses.
- That at the close of the examination and after hearing each of said witnesses, the board of special inquiry in its decision stated: "Considering the personal appearance of the applicant who seems to be of between 22 and 25 years, the Board believes that he is not a minor son as he alleges' and refused the appellee, upon that ground alone, the right to enter the Philippine Islands, and ordered him deported.
- That an appeal was taken from the board of special inquiry to the Collector of Customs. The Collector of Customs dismissed the appeal for the following reason in the following language: "The decision of the Board of Special Inquiry that this applicant had no right to land in the Philippine Islands as the legitimate minor son of a resident Chinese merchant, being fully sustained by the examination made by officers of the United States Public Health Service at the port of Manila who found said applicant to be very close to and probably over 21

years of age."

- That the appellee, upon being informed of the decision of the Collector of Customs, presented a petition for the writ of habeas corpus in the Court of First Instance, which petition, upon a consideration, was duly granted by the lower court, and the Attorney-General appealed.

From the examination of the decision of the board of special inquiry it will be found that it denied the appellee the right to enter the Philippine Islands solely upon the ground that from his personal appearance he seemed to be between 22 and 25 years of age; while the Collector of Customs confirmed the decision of the board of special inquiry because its finding had been sustained by officers of the United States Public Health Service. An examination of the record fails to disclose in any manner whatever any proof, or even a semblance of proof, showing or indicating in the slightest degree what the "personal appearance" of the appellee which caused the board of special inquiry of the officers of the United States Public Health Service to believe that the appellee was a person more than twentyone years of age; and, moreover, there is nothing in the record, to show that the appellee ever saw, or ever knew, or ever had an opportunity to examine or to cross-examine the "Officers of the United States Public Health Service" relating to his particular appearance which induced said officers to believe that was "probably over 21 years of age."

While the courts have held in numerous cases that the age of persons may be determined by their personal appearance, yet at the same time they have always insisted, when the question was raised, that the deciding officer or court should cause the record to show, not by a general statement that the "personal appearance" induced the officer or court to believe that the person in question was of a particular age but the particular fact or facts concerning the "personal appearance" which led said officer or court to believe that his age was as said officer or court stated.

The important reason for this rule is, that in case of an appeal, the appellate court may have before it all of the facts and circumstances which influenced or controled the officer or court in its conclusions; and, further, in order that the appellate court may see that the officer or court deciding the question had some reasonable basis for the conclusions, to the end that capricious and unfounded judgments affecting the rights of persons may not be promulgated.

The question before us has come before the courts many times. In fixing the penalty, in cases of rape, in questions of legitimacy, when intoxicating liquors are sold to alleged minors, abduction of minors, in cases of inheritance, when two persons die at the same time, and in many other cases, the age of persons becomes of paramount importance and the method of determining it has caused the courts no end of vexation.

In many cases, as indicated above, the age of a person is the most important fact to be determined in order to arrive at a just and legal conclusion. .And many times the only proof available is the "personal appearance" of the person in question.

It may be argued, in answer to the requirement, that the officer or court who fixes the age by the mere "personal appearance" cannot put into the record the particular fact or facts upon which he bases his conclusion. In reply to that argument, it may be said that if there are no particular facts upon which the judgment can be based, certainly no judgment should be rendered upon that question. All persons are constantly estimating the age of others, and if they should be asked in each particular case for the basis of their conclusion, they would always have some particular fact or facts upon which they base their conclusion. Officers and courts whose duty it is to ascertain the facts and reach conclusions will have no difficulty in stating the particular facts upon which they base their conclusions, if their conclusions are honest and not capricious. For example, an examination of the teeth of human beings is one of the methods by which their age may be approximately estimated; their general appearance,

wrinkles in the face, the color of the hair, the general appearance as to maturity, and many other specific facts may be given upon which age may be more or less definitely fixed.

Judgments and sentences of persons or courts acting in a judicial or quasi-judicial capacity must be based upon proof adduced and not upon opinion, when a question of fact is presented. Mere opinions do not constitute facts. The opinion of a witness as to what are the facts is not a fact. It is true that the opinion of experts are sometimes allowed when they relate to specific or hypothetical facts; but in such a case the court on appeal has before it the specific facts and may draw its own conclusion. When the court has nothing but the opinion of the witness it has nothing before it upon which to base its conclusions. The opinion may be a mere whim or caprice, based wholly upon the desires of the witness. Of course, after the witness has given the particular facts he may then give his opinion in certain classes of cases.

A mere opinion or suspicion cannot give probative force to testimony which in itself is insufficient to establish or to justify an inference of a particular fact. When an officer or court allows itself to enter upon the sea of suspicion, it permits itself to enter upon a sea which has no shore, and the embarkation is without a rudder or compass to control the direction or to ascertain its bearing.

To permit courts or persons acting in a judicial capacity, who have been given authority to decide questions of fact, to decide the same upon the mere whims or caprices of witnesses would permit them to resort to the miserable, unjust, and sometimes cowardly, expedient of attempting to hide the real facts under findings which rest upon nothing but their own desire to grasp power and to do violence to the rights of others, which they cannot otherwise do if they are required to make a finding of facts based upon evidence actually presented. Intellectual dishonesty should never be permitted to confer either jurisdiction or power upon any official, and, when power thus acquired is attempted to be used to another's hurt, the appellate courts should be alert to halt it.

From all of the foregoing, our conclusions are: (1) that there is no evidence in the record to support the conclusions of the Department of Customs; (2) all of the evidence adduced shows, without contradiction, that the appellee was a minor son of a resident Chinese merchant; and (3) there being no evidence in the record to support the conclusions of the Department of Customs, that fact constituted an abuse of authority.

Therefore, the judgment of the Court of First Instance is hereby affirmed; and, without any finding as to costs, it is so ordered.

Arellano, C.J., Torres, Araullo, Street, Malcolm, Avanceña, and Moir, JJ., concur.

Judgment affirmed.

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