

RAM SINGH, DHAN SINGH, GHOLA SINGH, GHANDA SINGH, JAGJIT SINGH, PALA SINGH, PLAINTIFFS AND APPELLANTS, VS. THE INSULAR COLLECTOR OF CUSTOMS, DEFENDANT AND APPELLEE.*G. R. No. 13669. October 25, 1918*

Ponente: JOHNSON, J.

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Each of said plaintiffs and appellants arrived at the port of Manila on the 8th day of May, 1917, on the steamship Yuen Sang, and asked permission to enter the Philippine Islands. They were each taken before a board of special inquiry and their right to enter was inquired into by said board. After a consideration of the status of each of them the board found that they were not entitled to enter the territory of the United States by virtue of the provisions of section 3 of the Act of Congress of February 5, 1917. From that decision they appealed to the Collector of Customs who affirmed the same. Later, a petition for a writ of habeas corpus was presented in the Court of First Instance of the city of Manila, accompanied by copy of the record of the Department of Customs. After a consideration of said petition, the Honorable George R. Harvey, judge, in a carefully prepared opinion, confirmed the conclusion of the Department of Customs, denied the petition for the writ of habeas corpus and remanded each of said appellants to the custody of the Collector of Customs in order that said appellants might be returned to the place whence they came, by the steamship company who brought them to the Philippine Islands. From that judgment each of the appellants appealed to this court.

The case, by agreement, was submitted to this court upon the briefs presented in the court below. The question presented is whether or not the appellants have a right to enter the territory of the United States in view of the provisions of section 3 of the Act of Congress of February 5, 1917. From the record it appears:

- (1) That Ram Singh, 22 years of age, is an East Indian, born in Punjab; that he has been a farmer and a peddler and has never been in the Philippine Islands before;
- (2) That Dhan Singh, 27 years of age, is an East Indian, born in Punjab; that he has been a peddler and has never been in the Philippine Islands before;
- (3) That Ghola Singh, 36 years of age, is an East Indian, born in Badhait; that he has been a farmer and night watchman and has never been in the Philippine Islands before;
- (4) That Ghanda Singh, 36 years of age, is an East Indian, born in Ghaniwala; that he has been a night watchman and a farmer in India and has never been in the Philippine Islands before;
- (5) That Jagjit Singh, 31 years of age, is an East Indian, bom in Punjab; that he has been a night watchman and farmer; that he comes to the Philippine Islands for the purpose of finding work as a night watchman or some other business; that there is no proof that he has ever been in the Philippine Islands before;
- (6) That Pala Singh, 35 years of age, is an East Indian, born in Punjab; that he has been in the Philippine Islands for a period of five years commencing with 1907; that while in the Philippine Islands he has been a peddler and

night watchman; that he has been a peddler in India.

Section 3 of the Act of Congress of February 5, 1917, provides, among other things, that—

"Natives of any country, province, or dependency situate on the Continent of Asia west of the one hundred and tenth meridian of longitude east from Greenwich and east of the fiftieth meridian of longitude east from Greenwich and south of the fiftieth parallel of latitude north, except that portion of said territory situate between the fiftieth and the sixty-fourth meridians of longitude east from Greenwich and the twenty-fourth and thirty-eighth parallels of latitude north, and no alien now in any way excluded from, or prevented from entering, the United States shall be admitted to the United States."

Said section 3 further provides that the following class of persons, from the said territory above described in India, may be admitted under certain conditions:

- "(a) Government officials.
- "(b) Ministers or religious teachers.
- "(c) Missionaries.
- "(d) Lawyers.
- "(e) Physicians.
- "(f) Chemists.
- "(g) Civil Engineers.
- "(h) Teachers.
- "(i) Students.
- "(j) Authors.
- "(k) Artists.
- "(l) Merchants.
- "(m) Travelers for curiosity or pleasure."

The lower court found that all and each of the above named persons came from the territory, the inhabitants of which were absolutely prohibited from entering the territory of the United States and did not belong to any of the exceptions above mentioned under the Act of Congress of February 5, 1917, and confirmed the decision of the Department of Customs.

The appellants contend:

- (a) That by virtue of treaty relations between the United States and Great Britain, they are entitled to enter the territory of the United States;
- (b) That they are merchants and therefore belong to the class of persons who may enter the territory of the United States under the above quoted Act of Congress; and
- (c) That the board of special inquiry had no jurisdiction to reject their application to enter the Philippine Islands.

With reference to the contention of the appellants that they are entitled to enter the territory of the United States under treaty relations, it may be said; (1) That by reason of the existence of British sovereignty over the territory included in the above quoted provision of the Act of Congress, there can be no treaty relations between the United States and the people of that territory; that whatever treaty relations exist concerning the said territory must be between the Government of the United States and Great Britain; (2) that the treaty relations between the United States of America and His Britannic Majesty relating to the right of British subjects to enter the territory of the United States is expressly limited to His Majesty's subjects in Europe and does not apply to British subjects of

India; and (3) that even though there existed a treaty between the two countries, the Act of Congress being of later date, its provisions would control.

Justice Field, in the case of *Whitney vs. Robertson*, (124 U. S., 190), speaking for the Supreme Court of the United States said: "A treaty is primarily a contract between two or more independent nations, * * * For the infraction of its provisions a remedy must be sought by the injured party through reclamations upon the other. * * * If the treaty contains stipulations which are self-executing, that is, require no legislation to make them operate, to that extent they have the force and effect of a legislative enactment. Congress may modify such (treaty) provisions, so far as they bind the United States, or supersede them altogether. By the Constitution a Treaty is placed on the same footing, and made of like obligation, with an Act of legislation. Both are declared by that instrument to be the supreme law of the land, and no superior efficacy is given to either over the other, When the two relate to the same subject, the courts will always endeavor to construe them so as to give effect to both, if that can be done without violating the language of either; but if the two are inconsistent, the one last in date will control the other, provided always the stipulation of the treaty on the subject is self-executing. If the country with which the treaty is made is dissatisfied with the action of the legislative department, it may present its complaint to the executive head of the government, and take such other measures as it may deem essential for the protection of its interest. The courts can afford no redress." (*Taylor vs. Morton*, 2 Curtis, 454, 459; *Head vs. Money Cases*, 112 U. S., 580; *Foster & Elan vs. Neilson*, 2 Peters [U. S.], 253, 314; *The Cherokee Tobacco*, 11 Wall. [U. S.], 616, 621; *U. S. vs. Lee Yen Tai*, 185 U. S., 213, 220.)

As Congress may by statute abrogate, so far at least as the United States is concerned, a treaty previously made by the United States with another nation, so the United States may by treaty supersede a prior Act of Congress on the same subject.

In the case of *Foster & Elan vs. Neilson* (supra) it was said that a treaty was to be regarded by the courts of justice as equivalent to an Act of the Legislature, whenever it operates of itself without the aid of any legislative provision.

In the case of *Head vs. Money Cases* (supra), the court said: "So far as a treaty made by the United States with any foreign nation can be the subject of judicial cognizance in the courts of this country, it is subject to such acts as Congress may pass for its enforcement, modification or repeal."

Said Act of Congress, in its section 3 above quoted, expressly provides that said section 3 should not operate in cases otherwise provided for by existing treaties, and no treaty having been called to our attention affecting the right of the appellants to enter the territory of the United States, it is the duty of the courts to construe and give effect to the express provision of the Act of Congress. (*Whitney vs. Robertson*, 124 U. S., 190, 195.)

With reference to the second contention of the appellants that they are merchants and are therefore entitled to enter the territory of the United States, it may be said: (1) That the Act of Congress furnishes us no definition for a merchant. We must therefore accept the general definition. The appellants admitted that they were night watchmen and peddlers. A peddler is generally defined to be a person who travels about the country with merchandise for the purpose of selling it; he is an itinerant trader who carries goods about in order to sell them, in contra-distinction to a trader who has goods for sale and sells them at a fixed place of business. He is an itinerant individual, ordinarily without local habitation or place of business, who travels about the country carrying commodities for sale. (*Graffy vs. Rushville*, 117 Ind., 502; *Davenport vs. Rice*, 75 Iowa, 74; *Commonwealth vs. Farnum*, 114 Mass., 267, 270; *Emert vs. State of Missouri*, 156 U. S., 296; *Roy vs. Schuff*, 51 La. Ann., 86; *Graffina vs. Finnegan*, 52 La. Ann., 694.) While a merchant is a person engaged in buying and selling merchandise at a fixed place of business. (*Tom Hong vs. U. S.*, 193 U. S., 517.)

The appellants are not merchants and do not therefore belong to the exempted class mentioned above in said section 3 of the Act of Congress.

With reference to the contention of appellants that the board of special inquiry had no authority or jurisdiction to reject their application to enter the Philippine Islands, it may be said that said Act of Congress in section 1 provides, that it shall be enforced in the Philippine Islands by officers of the Government thereof. By that provision, Congress evidently intended that the Government of the Philippine Islands should enforce said Act by the machinery and with the officers which it had created for the purpose of enforcing the Alien Exclusion Laws. The right and authority of the board of special inquiry to act as it did in the present case has been judicially determined in many cases contrary to the contentions which the appellants here make. (*Chieng Ah Sui vs. McCoy*, 239 U. S., 139; 22 Phil. Rep., 361; 36 Sup. Ct. Rep., 95; *In re Allen*, 2 Phil. Rep., 630; *Tan Chin Hin vs. Collector of Customs*, 27 Phil. Rep., 521.)

We are of the opinion, and so decide, that in view of the provisions of the Act of Congress "that said Act shall be enforced in the Philippine Islands by the government thereof," that the Collector of Customs and the officers appointed in the Department of Customs, in the absence of other officers appointed for that purpose by the Secretary of the Treasury of the United States, had authority to enforce those provisions of the Act of Congress of February 5, 1917, which restricted the immigration of aliens into the Philippine Islands.

In view of the foregoing, we are of the opinion and so decide that the appellants are not entitled, by virtue of the provisions of section 3 of the Act of Congress of February 5, 1917, to enter the Philippine Islands.

Therefore, the judgment of the lower court is hereby affirmed, and it is hereby ordered and decreed that each of the appellants must be remanded to the custody of the Insular Collector of Customs in order that they may be returned to the place whence they came, in accordance with the orders heretofore dictated by the Department of Customs.

It is so ordered, with costs against the appellants.

Torres, Street, Malcolm, Avanceña, and Fisher, JJ., concur.

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