

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. KO KIU DEFENDANT AND APPELLANT.

G.R. No. 14290. December 14, 1918

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with a violation of the Chinese Immigration Law (Act of Congress of September 13, 1888). The complaint alleged:

"That on or about the 4th day of December, 1917, in the city of Manila, Philippine Islands, the said Ko Kiu, a Chinese immigrant, did then and there wilfully, unlawfully, feloniously, fraudulently, and falsely personate one Co Sy Co, a Chinese laborer in whose favor Chinese Laborer's Return Certificate No. 26398 was issued on December 28, 1916, whereby the said Co Sy Co, who departed from the port of Manila for Amoy, China, on December 29, 1916, was authorized to return to the Philippine Islands within twelve months from said date, and the said accused, not being the person to whom the said certificate was issued, did then and there wilfully, unlawfully, feloniously, fraudulently, and knowingly present said certificate to the customs authorities in order to gain entrance into the Philippine Islands. Contrary to law."

From that complaint the defendant was arrested, arraigned, plead not guilty, was tried, found guilty of a violation of said Act of Congress, and sentenced to be imprisoned for a period of six months and to pay a fine of P500, to suffer subsidiary imprisonment in case of insolvency, and to pay the costs. It was further ordered that on the completion of said sentence, the appellant should be returned to the country whence he came. From that sentence the defendant appealed to this court.

The facts antecedent of the fact charged in the complaint may be stated as follows:

That on or about the first day of December, 1917, the appellant arrived at the port of Manila on the steamship Taisang; that some question arose as to his right to enter the territory of the United States, and the board of special inquiry of the department of customs made an investigation of that question; that during said investigation the appellant swore that his name was Co Sy Co and, in support of his right to enter the Philippine Islands, presented Chinese Laborer's Return Certificate No. 26398, which certificate had been issued to a Chinese person by the name of Co Sy Co on the 28th day of December, 1916. He also presented an application for Chinese Laborer's Return Certificate, No. 73386, as well as a certificate of residence in favor of said Co Sy Co, No. 5465. During said investigation it was proved to the satisfaction of said board of special inquiry that the appellant was not the Co Sy Co to whom said certificates had been issued; that Ko Kiu had never been in the Philippine Islands; that his representations were false and fraudulent and that he was not the Co Sy Co mentioned in said certificates but was a Chinese person who had never been in the Philippine Islands and did not present the section six certificate required by law; and that he did falsely, fraudulently, and feloniously attempt to personate the said Co Sy Co, and thereby gain admittance into the Philippine Islands.

Upon reaching the foregoing conclusions, the board of special inquiry "in order to serve as an example in future

cases, which undoubtedly would have a deterrent effect," recommended "that the applicant who names himself as Co Sy Co, be prosecuted, pending his deportation to China, under section 11 of the Act of Congress of September 13, 1888." Upon recommendation the prosecuting attorney of the city of Manila presented the above complaint.

Section 11 of the Act of Congress of September 13, 1888, provides:

"That any person who shall knowingly and falsely alter or substitute any name for the name written¹ in any certificate herein required, or forge such certificate, or knowingly utter any forged or fraudulent certificate, or falsely personate any person named in any such certificate, and any person other than the one to whom a certificate was issued who shall falsely present any such certificate, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars and imprisoned in a penitentiary for a term of not more than five years."

The appellant contends that said Act of Congress is not in force in the Philippine Islands. In reply to that contention the Attorney-General cites the Act of Congress of April 29, 1902 (32 Stat. at L., U. S., 176; vol. I, Public Laws, Philippine Commission, p. 1054), which was put in force and made applicable to the Philippine Islands. Said Act of Congress (April 29, 1902), provides that all laws now in force prohibiting and regulating the coming of Chinese persons and persons of Chinese descent into the United States, and the residence of such persons therein, including sections 5, 6, 7, 8, 9, 10, 11, 13, and 14 of an Act entitled "An Act to prohibit the coming of Chinese laborers into the United States," approved September 13, 1888, be, and the same are hereby reenacted, extended, and continued, so far as the same are not inconsistent with treaty obligations, to the island territory under the jurisdiction of the United States, etc., etc.

The precise question which the appellant raises has heretofore been decided against his contention in the case of *United States vs. Ballentine* (5 Phil. Rep., 312). Believing that the foregoing citation fully answers the contention of the appellant, and fully refutes his argument in support thereof, we are of the opinion, and so decide, that the sentence of the lower court, including the deportation of the appellant after the completion of his term of imprisonment, should be, and is hereby, affirmed. So ordered.

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

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