

## QUAN FAR, PETITIONER AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLEE.

*G.R. No. 16110. February 07, 1920*

Ponente: JOHNSON, J.

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### JOHNSON, J.:

This was an application for the writ of habeas corpus, presented in the Court of First Instance for the City of Manila. The petition was denied and the petitioner was ordered returned to the custody of the Collector of Customs, to be returned to the place whence he came by the steamship company which brought him to the Philippine Islands.

The facts out of which the petition grew may be stated as follows:

That the appellant arrived at the port of Manila on the steamship Loongsang on the 22d day of September, 1919, and asked permission to land as the legitimate minor son of a resident Chinese merchant. Some questions arose as to his right to enter, and he was taken before the board of special inquiry, where he testified that he was the son of Quan San, a resident Chinese merchant in the Philippine Islands; that he was 20 years of age. He also presented his father as a witness, who testified that he was a resident Chinese merchant in the Philippine Islands; that Quan Far was his legitimate son and was 20 years of age. Quan Choc was also presented as a witness, who testified that he knew Quan San and Quan Far for a number of years; that Quan San was a merchant residing in the Philippine Islands, in the municipality of Alabat, of the Province of Tayabas, and that Quan Far was the legitimate son of Quan San; that Quan Far was 20 year of age. No other additional proof was adduced before the board of special inquiry. Upon that proof the board of special inquiry found that the said Quan Far was "overage" evidently meaning that he was over 21 years of age, and denied him the right to enter the Philippine Islands and ordered him returned to the place whence he came.

From that decision of the board of special inquiry an appeal was taken to the Collector of Customs, who affirmed the same on the 6th day of December, 1919. On the 9th day of December, 1919, Quan Far presented the present writ of habeas corpus in the Court of First Instance, where, after a consideration, the same was denied and an appeal taken to this Court.

An examination of the evidence presented before the board of special inquiry fails to show any proof whatever of any kind or character, supporting the conclusion that the appellant is "overage." In the case of *Dy Keng vs. Collector of Customs* (p. 118, ante) we said that:

"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, or board should cause the record to show, not by a general statement that the personal appearance induced the officer, or court, or board to believe that the person in question was of a particular age, but the particular fact or facts concerning the personal appearance which led such officer, or court, or board to believe that his age was as said officer, or court stated. The particular facts upon which the conclusion is based

must be put in the record. Mere opinions do not constitute facts. The opinion may be a more whim or caprice, based wholly upon the desires of the witness. 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 owes itself to enter upon a sea of suspicion, it permits itself to enter upon a sea which has no shore, and the embarkation is without rudder or compass to control the direction or to ascertain its bearing. Cases should be decided upon the facts and the law and not upon mere suspicions, whims or caprice."

Considering that there was no proof whatever sustaining the finding of the board of special inquiry, that fact constitutes an abuse of authority. The writ of habeas corpus, therefore, should have been granted and the applicant should have been discharged from the custody of the law. (Tan Chin Hing vs. Collector of Customs, 27 Phil., 521.)

For the foregoing reasons, the judgment appealed from is hereby revoked, and it is hereby ordered and decreed that the writ of habeas corpus prayed for be granted and the applicant discharged from the custody of the law; and, without any finding as to costs, it is so ordered.

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

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