

**LALCHAND CHATTAMAL, HASSOMAL TULSIDAS MANGHANMALAM
AND HOLCHAND HERANAND SHAMRAHIANI, PETITIONERS AND
APPELLANTS, VS. THE INSULAR COLLECTOR OF CUSTOMS,
RESPONDENT AND APPELLEE.**

G. R. No. 16347. November 03, 1920

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that the appellant, Lalchand Chattamal arrived at the port of Manila on the 9th day of January, 1918 on the steamship Tenyo Maru, and asked permission to enter the Philippine Islands; that the appellants, Hassomal Tulsidas Manghanmalam and Holchand Heranand Shamrahiani arrived at the port of Manila on the 7th day of January, 1918, on the steamship Yuensang, and asked permission to enter the Philippine Islands.

A board of special inquiry was appointed to inquire into the right of said appellants to enter the territory of the United States. At the conclusion of the hearing by the board of special inquiry, it found that said applicants (appellants) had not "complied with the requirements of Rule 8 of subdivision 3 of the Immigration Rules of May 1, 1917," which rules had been promulgated by the immigration authorities of the United States to the effect that "persons who claim exemption on the ground that they are of a status or occupation mentioned in the exemptions to the geographical exclusion clause must present, in support of such a claim, evidence procured at the place of their domicile showing what their status or occupation has been," and for that reason denied the right of each of said applicants to enter the Philippine Islands. From that decision, an appeal was taken to the Collector of Customs and by him affirmed.

On the 15th day of February, 1918, a petition for a writ of habeas corpus was presented in the Court of First Instance of the city of Manila, alleging that said applicants (appellants) were being illegally detained. To the petition for the writ of habeas corpus the Attorney-General made due return. The contention of the Attorney-General in his defense is that the applicants (appellants) not having presented the evidence required by said Rule 8, subdivision 3 of the Immigration Rules of May 1, 1917, they were not entitled to enter the Philippine Islands; that the department of customs in denying them the right to enter had not abused the power or discretion imposed upon that department of the Government and asked that the petition for the habeas corpus be denied. The return of the Attorney-General was made on the 20th day of February, 1918. The case was not decided by the lower court, however, until more than two years thereafter, or, on the 10th day of March, 1920. It is difficult to understand, in view of the provisions of the law, why a petition for a writ of habeas corpus should be permitted to remain undecided for a period of more than two years.

The lower court, after a consideration of the record, reached the conclusion that there was no proof in the same showing that the department of customs had abused its power, discretion or authority, denied the petition for the writ of habeas corpus and ordered the petitioners remanded to the custody of the Insular Collector of Customs for deportation. From that judgment the petitioners appealed to this court.

The attorney for the appellant, in his brief, makes the statement that the appellant (Lalchand Chattamal) has left the Philippine Islands and that the appeal as to him has been dismissed. That statement is not substantiated by the record. The record shows that the said Lalchand Chattamal, together with his coappellants, appealed from the decision of the Court of First Instance on the 15th day of March, 1920, and until the record shows to the contrary we must consider that he is still one of the appellants.

The attorney for the appellant in his first assignment of error contends that the lower court committed an error in refusing to hold that an industrial partner of a mercantile concern is a merchant.

Considering that the appellants did not furnish the proof required by subparagraph 3 of Rule 8 of May 1, 1917, promulgated by the department of labor, we deem it unnecessary to decide that question. The law confers upon Bureau of Immigration full and final jurisdiction in immigration cases. The law further provides that said department may provide rules and regulations for the enforcement of the immigration law. It has been frequently decided that "under the immigration law authority is vested in the Secretary of Labor to provide rules and regulations for enforcing the provisions of the Act. Of these rules, which have the effect of law, the courts must take judicial notice. They are binding upon the department of labor as a part of the law of the land." (Colyer vs. Skeffington, 265 Fed. Rep., 17, 28; Caha vs. U. S., 152 U. S., 211; 14 Sup. Ct. Rep., 513.)

It is also familiar and a perfectly well settled law that the courts have no jurisdiction in habeas corpus proceedings to interfere with proceedings in the department of labor (in the Philippine Islands, department of customs) concerning the exclusion or the expulsion of aliens, unless and until there is some error of law in that department. The courts have no jurisdiction in cases of this nature. Unless the proceedings in that department are unfair, thus lacking some of the essential elements of some proceeding of law, or are based upon some misconstruction of the statute with regard to the rules made pursuant thereto, or other vitiating errors of law, the courts have no jurisdiction.

In the first instance, the courts have no right or authority to try the question whether or not the alien has a right to enter the territory of the United States. The first question to be decided by the court is whether or not the department of customs has abused its power, discretion or authority. If that fact is not sustained, then the courts are without jurisdiction to further consider the right of the alien to enter.

In the present case the rule, to which reference is made above, provides that aliens asking permission to enter the territory of the United States "shall present in support of such a claim evidence procured in the place of their domicile, that they are of a status or occupation" which permits them to enter the territory of the United States. Said rule further provides that "such evidence must be of a convincing nature, and its authenticity shall be attested by the consular officer of the United States located nearest such place of domicile."

In the present case the department of customs held that the evidence presented by the appellants was not "of a convincing nature and its authenticity had not been duly and properly attested."

It has been frequently held that the mere fact that the department of customs did not believe the witnesses presented by the applicant, or that the evidence was not sufficient to satisfy them, was not an abuse of discretion.

The appellants are laboring under a misapprehension of the immigration law. They seem to believe that they have a right to enter the territory of the United States in order to become merchants there. That is not the intention of the law. The law provides that if they are merchants at the place from which they come they may, when that fact is established in accordance with the rules and regulations, enter the territory of the United States. Under the theory of the appellants, every able-bodied British India subject could enter the territory of the United States alleging that he desired to become a merchant. Their right to enter is because they are and have been merchants,

not because they desire to become merchants. There is nothing in the record nor the law to justify a modification of the decision of the lower court based upon the first assignment of error.

What has been said with reference to the first assignment of error of the appellants, we believe also answers their second assignment of error.

With reference to the third assignment of error, that the lower court committed an error in refusing the appellants the benefit of Bill No. 1580 of the Philippine Legislature, it is sufficient to say that that bill never became a law and no error was therefore committed by the lower court in not taking it into consideration in the decision of the present case.

After a careful examination of the entire record, we fail to find anything therein which even tends remotely to show an abuse of the power, discretion, or authority on the part of the department of customs. Therefore, the judgment of the lower court is hereby affirmed, with costs. So ordered.

Mapa, C. J., Araullo, Avanceña and Villamor, JJ., concur.

DISSENTING

MALCOLM, J.,

I dissent for the reason that the petitioners are "industrial partners," and as such, "merchants" within the meaning of our Code of Commerce.

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