

SAM MOW TOW, PETITIONER AND APPELLEE, VS. VICENTE ALDANESE, INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.

G. R. No. 17558. October 03, 1921

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that one Eng Wing, a boy of 10 years of age, arrived at the port of Manila on the 15th day of September, 1919, on the steamship Yuensang, and asked permission to enter the Philippine Islands. For some reason which does not appear from the record, the hearing upon the right of the applicant to enter the Philippine Islands was not held until the 6th day of February, 1920.

The said Eng Wing claimed to right to enter the Philippine Islands as the minor son of Sam Mow Tow, a resident Chinese merchant in the City of Manila. A board of special inquiry was duly appointed to inquire into the right of the said Eng Wing to enter the Philippine Islands. During said investigation, the following proof was adduced, and not disputed:

That the said Eng Wing is a boy of 10 years of age; that his father is Sam Mow Tow; that Sam Mow Tow is a merchant in the Philippine Islands; that Jim Tao is the father of Sam Mow Tow; that Jim Tao is also a merchant in the City of Manila; that some time before the proceedings in the present case took place, the said Sam Mow Tow entered the Philippine Islands as a citizen of the United States; and that Jim Tao was born in the State of California.

The board of special inquiry, after hearing the undisputed evidence above set forth, denied the applicant the right to enter the Philippine Islands, simply because his name was Eng Wing while the name of his father was Sam Mow Tow. In other words, Eng Wing was denied the right to enter the Philippine Islands as the minor son of a resident Chinese merchant, a citizen of the United States, simply because his name was Eng Wing while the name of his father was Sam Mow Tow. From the decision of the board of special inquiry an appeal was taken to the Collector of Customs, who affirmed the same.

Later, Sam Mow Tow presented a petition on behalf of his son in the Court of First Instance of the City of Manila, for the writ of habeas corpus. To said writ due return was made. The lower court, after considering the record made by the department of customs, reached the conclusion that said department had abused its power and discretion in denying Eng Wing the right to enter the Philippine Islands, granted the writ of habeas corpus, and revoked the order of deportation of the department of customs. From that decision the Collector of Customs appealed to this court.

The evidence taken before the board of special inquiry, above set forth, is not disputed. The declaration made by the applicant Eng Wing, as well as that of both his father and grandfather, is not contradicted in the slightest degree. The board of special inquiry said that there is no explanation made why the son should bear the name of Eng Wing while his father bears the name of Sam Mow Tow. Even in that respect the board of special inquiry was

in error. Sam Mow Tow swore positively that, as a Chinaman, he was at liberty to give his son whatever name he desired. That fact is not denied. In other words, there is not a scintilla of evidence in the record that even remotely discredits the testimony of Eng Wing and his two parents.

While it is true, and has been decided in many cases, that the department of customs is not obliged to believe the declaration of witnesses in cases like the present, yet, when it does disbelieve the witnesses, it must be able to give some good reason therefor. The department of customs must give the particular facts upon which its conclusions are based, and those facts must be found in the record. An opinion may be a mere whim or caprice, based wholly upon desires. 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 of the Government, or the court itself, enters upon a 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. Cases should be decided upon the facts and the law and not upon mere suspicions, whims, or caprice. (Dy Keng vs. Collector of Customs, 40 Phil., 118; Quan Far vs. Collector of Customs, 40 Phil., 779.)

Considering that there was no proof whatever sustaining the finding of the board of special inquiry, that fact constitutes an abuse of authority.

Therefore, the judgment of the lower court is hereby affirmed, with costs de oficio. So ordered.

Araullo, Street, Avancena, and Villamor, JJ., concur.

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