

CHUA QUIP, PETITIONER AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.

G.R. No. 31905. December 28, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The petitioner has been residing in this country for many years.

In 1926 he went to China, and came back to the Philippines in December, 1927, asking that he be readmitted as a returning resident Chinese merchant.

A board of special inquiry was appointed to hear the petition, which, having done so, denied the same, and was confirmed in its action by the Insular Collector of Customs. The principal reason for the denial is that it has not been satisfactorily proved that the petitioner is a merchant.

The appellee was thus compelled to apply to the Court of First Instance of Manila for a writ of habeas corpus, which was granted.

From this order granting the writ, the Insular Collector of Customs appealed, assigning the following alleged errors:

"1. The trial court erred in holding that the appellee is the owner of a 'sari-sari' store at 637 Calle Lara, Manila.

"2. The trial court erred in holding that the petitioner-appellee is a 'merchant' within the meaning of the Chinese Exclusion Act.

"3. The trial court erred in holding that the customs authorities abused their authority and discretion in refusing the readmission of the petitioner-appellee to these Islands.

"4. The trial court erred in granting the writ of habeas corpus prayed for the petitioner-appellee."

We are of opinion that the petitioner has sufficiently proved that he is a part owner of a "sari-sari" store situated at No. 637 Lara Street, Manila. The fact that his Filipino witnesses may not know his real name, neither detracts from the verity of their testimony, nor from the appellee's allegation; and the licenses issued to him for said store, since the year 1922, taken together with the testimony of said witnesses, bear out his allegation that such a store exists, and that he is a co-owner thereof.

The character of the business in which he is engaged makes of him a merchant within the definition of this word given in section 2, of the Act of Congress of November 3, 1893.

It does not appear from the record that refreshments and other foodstuffs cooked and prepared, are served in said store as in the "sari-sari" stores referred to in the Attorney-General's brief. For this reason, no application can be made in the instant case of the citations in said brief, calling attention to the work of serving coffee and refreshments, which, in the case of *United States vs. Lim Co* (12 Phil., 703) was not deemed necessary to the

business of a merchant, to wit, to buy and sell merchandise; nor is the doctrine laid down in *In re An Yow* (59 Fed. Rep., 561) applicable herein, inasmuch as the store in question is not a restaurant.

The party appellant in his brief expresses the fear that to consider Chinamen owning "sari-sari" stores as merchants, might have the effect of encouraging fraud and frustrating the aims of the exclusion law, suggesting that any Chinese with a few pesos might open a "sari-sari" store, in order to enable his wife and children to enter this country. But it should be borne in mind that the law refers to merchants in good faith, or such as engage in business with a sincere and honest purpose. And it is incumbent upon the proper authorities and the courts to judge each particular case upon its own merits, and to refuse to recognize as merchants all immigrants who are not bona fide merchants, but have acquired the status of merchants, for illegal purposes. And in the present case the record does not show, or even suggest, that the appellee is not a bona fide merchant. In fact, on the first page of the instrument Exhibit C (page 16 of the record) there appears a certification to the effect that the appellee's allegations that he is a merchant were made in good faith.

As to the amount of the capital invested in the aforesaid store, it is true that when such amount is small it might in some case be construed as bad faith on the part of the one attempting to pass himself off as a merchant, provided other facts in the case warrant such a conclusion; but, in the absence of such evidence or indication of bad faith, it would be an unjust application of the law to deny the appellee the status of a merchant, for the sole reason that the capital invested in his store is only P700.

The judgment appealed from is affirmed without costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Ostrand, Johns, and Villa-Real, JJ., concur.

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