

TEH HUAN (ALIAS YU SIONG), PETITIONER AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.

G.R. No. 31953. December 16, 1929

Ponente: JOHNS, J.

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JOHNS, J.:

As to Teh Huan, the decision of the board of special inquiry was reversed by the Insular Collector of Customs, and the only question involved on this appeal is whether or not his alleged wife, Tan Po Suan, should be permitted to land. At the hearing before the board, Tan Po Suan testified that she was 26 years of age; that she married Teh Huan in China about 10 years ago, by whom she had two children, who were then living with her mother in China; and that she was living at Estraude Street No. 7, Manila with her husband. Teh Huan testified that Tan Po Suan was his wife, and that he married her in China about 10 years ago, and Teh Huan testified that he was a merchant residing on T. Pinpin Street, and that he knew Tan Po Suan as the wife of Teh Huan, and that they were living at No. 7 Estraude Street, Manila. The evidence of Lucio Baltazar and Lorenzo Hernandez tends to show that they knew the husband, and that he was a merchant in Manila;

In its analysis of the evidence the board of special inquiry found that Teh Huan was not a merchant as he claims and denied the right of either of them to land, but did not make any finding as to whether or not they were husband and wife. Apparently the board assumed that, if Teh Huan was not a merchant, neither of them was entitled to enter. As stated, the finding of the board as to Teh Huan was reversed by the Insular Collector of Customs, and he was permitted to land, and Tan Po Suan was denied the right to land, without any finding as to whether or not they were husband and wife. In other words, the customs authorities did not make any finding upon that vital and material point, and there is nothing in the record to dispute the testimony as to the alleged marriage, and for want of any finding on that point, there are no legal presumptions to overcome.

Section-334 of the Code of Civil Procedure says:

"The following presumptions are satisfactory, if uncontradicted, but they are disputable, and may be contradicted by other evidence:

* * * * *

"28. That a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage."

* * * * *

The case of Chua Chiacco vs. Collector of Customs (53 Phil., 31), on which the Attorney-General relies, decided by this court on March.21, 1929, is not in point, for the simple reason that the customs authorities did not make any finding upon the vital question of marriage. For want of such finding, there is nothing to overcome the evidence submitted by the petitioners as to the marriage.

The judgment of the lower court is affirmed, without costs. So ordered.

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

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