

GO CHEN AND GO LEK, PETIONERS AND APPELLEES, VS. THE COLLECTOR OF CUSTOMS OF CEBU, RESPONDENT AND APPELLANT.

G. R. No. 35980. February 20, 1932

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This appeal was taken by the collector of customs for Cebu against the judgment of the Court of First Instance of that province, granting the writ of habeas corpus applied for by Go Chen and Go Lek, and ordering that they be set at liberty and permitted to remain in the Philippine Islands.

In support of his appeal the appellant assigns the following alleged errors as committed by the court below:

"1. The trial court erred in holding that the right of a minor to enter or remain in the Philippine Islands is not a consequence of the exercise of patria potestad.

"2. The trial court erred in issuing the writ of habeas corpus applied for by the petitioners."

The following facts were established by a preponderance of evidence:

The petitioners and appellees, Go Chen and Go Lek, are minor children of Go Tuan and Tan Bon. Go Tuan died in China eleven years ago. Two years later, Tan Bon his widow, married another Chinaman, and shortly thereafter came to the Philippine Islands with her second husband, where she was admitted as the wife of a Chinese merchant, and where she has been residing for the past eight years. The petitioners remained in China under a paternal uncle, together with their three brothers and one sister. Tan Bon is at present engaged in the furniture business in Cebu. Being a resident merchant, she ordered her two sons, the petitioners herein, to join her in these Islands. On October 20, 1930, the petitioners and appellees, Go Lek and Go Chen, then aged 20 and 18, respectively, arrived in the Philippines on board the S. S. Susana II, and took up their abode with their mother, Tan Bon at her home in Cebu, Cebu. A month later, Go Lek left his mother's home and went to Talisayan, Misamis Province, at the invitation of a friend of his named Go Tian Ho, whom he had been helping in his store in that municipality. The petitioners and appellees are both single and have another brother, also single 21 years of age, named Go Soon, who is living in Cebu with his mother.

Now, then, a Chinese widow who never resided in the Philippine Islands during her first marriage, is admitted and acquires a residence as the wife of a Chinese merchant, her second husband. Is she entitled to bring in her minor children by the first marriage?

In *In re Chung Toy Ho* (42 Fed., 398, 399), the Circuit Court of Oregon, United States, gives the following reason for the right of a Chinese resident's wife and children, to enter without a Residence certificate: "It is impossible to believe that parties to this treaty, which permits the servants of a merchant to enter the country with him, ever contemplated the exclusion of his wife and children. And the reason why they are not expressly mentioned, as entitled to such admission, is found in the fact that the domicile of the wife and children is that of the husband and father, and that the concession to the merchant of the right to enter the United States, and dwell therein at

pleasure, fairly construed, does include his wife and minor children; particularly when it is remembered that such concession is accompanied with a declaration to the effect that, in such entry and sojourn in the country, he shall be entitled to all the rights and privileges of a subject of Great Britain or a citizen of France."

In *United States vs. Gue Lim* (176 U. S., 459, 468), the United States Supreme Court gives the same reason as follows:

"In the case of the minor-children, the same result must follow as in that of the wife. All the reasons which favor the construction of the statute as exempting the wife from the necessity of procuring a certificate apply with equal force to the case of minor children of a member or members of the admitted classes. They come in by reason of their relationship to the father, and whether they accompany or follow him, a certificate is not necessary in either case. When the fact is established to the satisfaction of the authorities, that the person claiming to enter, either as wife or minor child, is in fact the wife or minor child of one of the members of a class mentioned in the treaty as entitled to enter, then that person is entitled to admission without the certificate."

Therefore the ground of the wife's right of entry into the territory of the United States and hence, into the Philippine Islands, is the principle of Private International Law and of Civil Law, that a man's domicile is also the domicile of his wife and minor children, and that he is in duty bound to protect, support, and keep them in his company. A Chinaman's Chinese wife and her minor children, then, do not enter the Philippine Islands through their own right, but by virtue of the right of the husband and father, unless the Chinese wife belongs to the privileged class.

The Chinese woman Tan Bon, who seeks to bring in her minor children, the petitioners herein, did not enter through her own but through that of her second husband. If the wife's right to enter is derived from her husband's, and the right of the minor children from that of their father, then the petitioners and appellees, not being children of their mother's second husband, are not entitled to enter. The mere fact of their being children of Tan Bon confers on them no right of entry, inasmuch as she herself did not enter of her own right, and they cannot base their right on hers.

Counsel argue that as she is now a resident merchant, she is entitled to bring in her minor children. The mere fact that she became a merchant after coming into these Islands, gives her no right to remain, following this court's ruling in the cases of *Juan Co vs. Rafferty* (14 Phil., 235) ; *United States vs. Yu Wa* (28 Phil., 1); *United States vs. Sia Lam Han* (29 Phil., 159) ; *United States vs. So Hao Ka* (31 Phil., 649). She has the latter right by virtue of being the wife of a Chinese merchant who came into the country in that capacity.

As the Chinese woman aforesaid, Tan Bon, did not enter the Philippine Islands by her own right, but by virtue of her second husband's right, she is not entitled to bring in her minor children by another Chinaman who never had a legal residence in the Archipelago.

Wherefore we are of opinion and so hold, that a Chinese woman entering these Islands not on her own right but by virtue of the right of her second husband, a Chinaman, has no right to bring in her minor children by the first husband, who never had a legal residence in this country.

By virtue whereof, the judgment appealed from is reversed, and the writ of habeas corpus denied, with costs against the appellees. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez, and Imperial, JJ., concur.

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