

ANG GIOK CHIP, PETITIONER AND APPELLANT, VS. INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLEE.

G. R. No. 37196. December 23, 1932

Ponente: HULL, J.

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HULL, J.:

Petitioner and appellant claims as a resident Chinese merchant that he is entitled to the admission to these Islands of his wife and three minor children who were denied admission by a board of special inquiry of the Bureau of Customs on the ground that the petitioner had failed to prove that he was a merchant. On appeal the Acting Collector of Customs confirmed the decision of a board of special inquiry. A petition for habeas corpus was filed in the Court of First Instance of Manila on behalf of the applicant, which petition was denied. The case is now brought here on appeal.

Petitioner showed that he had a 2 per cent interest in a Chinese co-partnership of Seng Kee & Company. A certified copy of the articles of the co-partnership was produced and, shows that the co-partnership is engaged in importing and exporting, manufacturing, and general commercial enterprises. The value of petitioner's interest of said co- partnership is placed at the sum, of P4,500. It is also shown that he is employed by the firm as a customs broker at a salary in the neighborhood of a thousand pesos (P1,000) per annum, but is not shown by any satisfactory proof that he is actually engaged in buying and selling merchandise in connection with the business of Seng Kee & Company. It was also claimed by petitioner at the hearing that he formerly owned an independent mercantile business in the City of Manila of the value of P45,000 which had been burned and on which the insurance was unpaid. The nature of this business and all other details relative thereto was not shown by the applicant who disclaimed knowledge of its affairs saying that the business was in the hands of his manager.

The real question presented may be simply stated. It is; Does ownership in. a Chinese co-partnership engaged in mercantile enterprises make such a holder a merchant within the Chinese Exclusion Act? From a practical standpoint, the ownership of one share of stock can not make a man a capitalist. The ownership of one share of stock of a mining corporation does not make a man a miner. If the ownership of a minor share in a mercantile co-partnership would make, as a matter of law, a merchant out of a laborer, it is easy to see how Chinese co-partnerships of the Philippines would expand and how impossible it would be to enforce the Chinese Exclusion Act. The customs officials in administering the Immigration Law must determine whether the applicant is or is not in fact a merchant and the mere ownership of a share in a mercantile business is not conclusive that a person occupies that status. Congress has denied a merchant as used in the Chinese Exclusion Act as:

"* * * a person engaged in buying and selling merchandise, at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant." (U. S. C. A. tit. 8, sec. 289.)

The contention of petitioner and appellant is disposed of by the decision of the Supreme Court of the United States. *Tulsidas vs. Collector of Customs* (262 U. S., 258, 264.)

"A merchant is the owner of the business; a salesman or manager, a servant of it; and especially so under the Immigration Law. The policy of the law must be kept in mind. It is careful to distinguish between the status of a merchant and those below that status. A merchant is fixed in it and made constant to it by his financial interest; a salesman or manager is but an employee, however else he may be denominated, and may withdraw from his employment at any moment of time and become a competitor in the ranks of labor, using the word in the sense the law implies."

After reviewing the record of the board of special inquiry and the action of the Insular Collector of Customs it can not be said that they have abused the authority and discretion vested in them by law. The judgment appealed from is affirmed with costs against the appellant. So ordered.

Avanceña, C. J., Street, Villamor, Villa-Real, Abad Santos, Vickers, Imperial, and Butte, JJ., concur.

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