

KO POCO, PETITIONER AND APPELLEE, VS. H. B. MCCOY, RESPONDENT AND APPELLANT.

G.R. No. 3904. March 20, 1908

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 10th day of January. 1907, the applicant presented a petition in the Court of First Instance of the city of Manila for a writ of habeas corpus, based upon the following grounds:

"1. That he is unlawfully detained, confined, and restrained of his liberty by H. B. McCoy, Acting Collector of Customs for the Philippine Islands, acting as Commissioner-General of Immigration for the Philippine Islands, on board the steamship Zafiro, now at anchor in the port of Manila;

"2. That your petitioner is, and has been for more than one year, a resident of the municipality of Atimonan, Province of Tayabas, where he is engaged in the dry-goods business;

"3. That he departed for the Empire of China on the 20th day of April, 1906, on the steamship Taming, and that at the time of his departure your petitioner secured from the immigration division of the custom-house at the port of Manila the necessary indorsement, showing him to be a resident Chinese merchant, so as to entitle him to land in the Philippine Islands upon his return;

"4. That he arrived at the port of Manila on the steamship Zafiro, on the 8th day of January, 1907, and was detained, confined, and restrained of his liberty, and prohibited from landing, on the alleged ground that he was suffering from an infectious disease known as trachoma;

"5. That the Acting Collector of Customs bases his right to so confine, detain, and restrain your petitioner of his liberty on a circular issued from his office, under date of December 16, 1906, which said circular took effect on January 1, 1907, directing that all Chinese persons arriving at the port of Manila on and after such date, and found to be suffering from a contagious or infectious disease, be denied the right to land ;

"6. That such order is contrary to, and in violation of section 36 of the act of Congress known as 'An act to regulate the immigration of aliens into the United States and its Territories,' and that the said order of restriction, confinement, and detention has not been issued by any court of record, or other competent tribunal.

"Wherefore your petitioner prays that a writ of habeas corpus may be issued, directed to the said H. B. McCoy, Acting Collector of Customs, acting as Commissioner-General of Immigration for the Philippine Islands, commanding him to have the body of your petitioner before this honorable court, at a time and place therein to be specified, to do and receive what shall then and there be considered by your honor concerning him, together with the time and cause of his detention, and said writ; and that your petitioner may be restored to his liberty.

"C. W. O'BRIEN,
"Attorney for Petitioner.

"Manila, P. I., January 10, 1907."

On the 12th day of January, 1907, the judge of said court issued a writ of habeas corpus, directing that the respondent should present the body of the petitioner before the court on the same day.

In accordance with the provisions of said writ, the respondent on the 12th day of January, 1907, presented the body of the petitioner before the court and gave the following reasons for the detention of the same:

"I.

"That the Ko Poco referred to in the petition in this case is a Chinese alien who arrived at the port of Manila from a foreign port on January 8, 1907, and sought to land and be admitted into the Philippine Islands at said port,

"II.

"That the physical and mental examination of said alien was made by Dr. Victor Gr. Heiser, Passed Assistant Surgeon of the United States Public Health and Marine-Hospital Service, who has had more than two years' experience in the practice of his profession since receiving the degree of doctor of medicine, and that the said Dr. Victor Gr. Heiser has certified, for the information of the immigration officers at the port of Manila, that the said Ko Poco is a native of China of the age of 49 years and that he has trachoma, which is a dangerous contagious disease.

"III.

"That the right of said alien to land and be admitted into the Philippine Islands has been inquired into by the immigration officers at said port of Manila, thereunto duly authorized, and the decision of such officers is adverse to the right of said alien to land in the Philippine Islands, for the reason that said Ko Poco is one of a class of aliens who must be excluded from admission into the Philippine Islands under the provisions of section 2 of the act of Congress of March 3, 1903, entitled 'An act to regulate the immigration of aliens into the United States,' because said alien is a person afflicted with a dangerous contagious disease known by the name of trachoma.

"IV.

"That in consequence of said decision of the immigration officers of the port of Manila said alien has been excluded from admission into the Philippine Islands under and by virtue of the provisions of said Immigration Law of March 3, 1903, which law, by its section 33, is made applicable to any, waters, territory, or other place now subject to the jurisdiction of the United States, and it has been ordered that the said Ko Poco be deported to the foreign port whence he came.

"V.

"That the said alien Ko Poco is detained by the respondent, but the said detention is only such as is necessary to insure the due execution of the said order of deportation.

"VI.

"That in compliance with the writ of habeas corpus in this case the body of the said Ko Poco is produced in court to abide the order of the court in the premises.

"H. B. MCCOY,

"Acting Insular Collector of Customs.

"MANILA, January 12, 1907."

Upon the facts thus presented in the application and answer, and without any further proof, the lower court made the following findings of fact:

"From the stipulations and admissions made by the parties, through their respective attorneys in open court, the facts were found to be as follows:

"That the petitioner Ko Poco has been a resident of the Philippine Islands for more than twenty-live years, and during that period he has been engaged in mercantile business in the Philippine Islands, and for twelve years last past has. conducted business and had his home in the Province of Tayabas, Philippine Islands; that he has large property interests there and that his family there reside and have resided for a long term of years; that when he left the Philippine Islands on the 20th day of April, 1906, he had from the immigration officers of the Philippine Islands a certificate to the effect that he was a resident Chinese merchant, living in the Philippine Islands; that at the time of his departure the Immigration Act of Congress of March 3, 1903, had not been enforced in the Philippine Islands; that upon his return to the Philippine Islands in January, 1907, he was found to be afflicted with trachoma and that trachoma is a contagious disease."

The contention of the petitioner in the lower court was that the act of Congress of March 3, 1903, did not apply to Chinese persons; the lower court held that the said act of Congress did apply to Chinese aliens, but that said act did not apply to the petitioner for the reason that he had resided in the Philippine Islands for many years as a resident of the same and was therefore not an alien. Upon these facts and conclusions the lower court discharged the petitioner from custody and confinement.

From that decision of the lower court the respondent appealed to this court, making the following assignment of errors:

"I.

"The court erred in finding so-called facts not alleged in the application nor in the return "to the writ and not stipulated nor admitted of record by the petitioner and respondent.

"II.

"The court erred in finding that the petitioner, Ko Poco, a Chinese person born in the Empire of China, of the age of 49 years, is not an alien within the meaning of the Immigration Act approved March 3, 1903.

"III.

"The court erred in finding that the provisions of said act of Congress approved March 3, 1903, relating to the immigration of aliens into the United States, are not applicable to the petitioner in this case.

"IV.

"The court erred in finding that the said petitioner, Ko Poco, is a resident citizen of the Philippine Islands, although born in China, and not a naturalized citizen of these Islands nor of the United States.

"The court erred in not treating the finding and action of the duly authorized immigration officers upon the question of whether or not the petitioner, Ko Poco, is an alien, as well as the other questions of fact passed upon by the immigration authorities, as final and conclusive, having been made by a tribunal authorized to decide the same, since it is not alleged nor made to appear that such officers, in this case, had abused the discretion invested in them by law, or in some other way committed prejudicial error in hearing and determining the same.

"VI.

"The court erred in ordering that the petitioner, Ko Poco, be discharged from the custody of the respondent and permitted to enter the Philippine Islands, while afflicted with the dangerous contagious disease known as trachoma."

The board of special inquiry and the customs officials, charged with the administration of the law relating to the admission of "aliens" into the Philippine Islands, decided that the applicant was an "alien" and had trachoma and was not entitled to admission into said Islands, under the provisions of section 2 of the act of Congress of March 3, 1903. There is no allegation that such customs officials in denying the petitioner the right to enter the Philippine Islands abused the authority delegated to them. There is no allegation that the executive branch of the

Government has not fully complied with all of the duties imposed upon it with reference to his right to enter the Philippine Islands. In the absence of such allegations and. proof sustaining the same, this court will not grant the writ of habeas corpus. (Rafferty vs. The Judge of the Court of First Instance, 7 Phil. Rep., 164; Ngo-Ti vs. Sinister, 7 Phil. Rep., 355; Lo Po vs. McCoy, 8 Phil. Rep., 343; Chin Yow vs. U. S., 28 Sup. Ct Rep., 201; Jao Igco vs. Sinister,[1] 6 Off. Gaz., 703).

It is therefore the judgment of this court that the decision of the lower court be reversed and that the said Ko Poco be remanded to the custody of the Insular Collector of Customs, to the end that the order heretofore made by the board of special inquiry be carried out.

Without any finding as to costs, it is so ordered.

Arellano, C. J., Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.

[1] Post.

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