

ANG CHAY TIAN, PETITIONER AND APPELLEE, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLANT.

G. R. No. 41258. September 20, 1934

Ponente: HULL, J.

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HULL, J.:

On December 15, 1909, a landing certificate of residence was issued to Ang Chay Tian by the Insular Collector of Customs on the claim that he was the minor son of Ang Song Tan or Ang Song Tin, then a resident Chinese merchant in the Philippines. "He was at that time about ten years of age. When he was twenty-one, his alleged father gave him a half interest in his business, and since that time he has been a merchant in the City of Manila. His father has since died. Having become involved in court proceedings with his step-mother, the widow of his father, she reported to the immigration authorities that Ang Chay Tian was not a son but an adopted brother.

On this information a warrant of arrest was issued and the board of special inquiry held that he was not a minor son of Ang Song Tan on December 15, 1909, and recommended that he be deported, which recommendation was approved by the Insular Collector of Customs. Whereupon Ang Chay Tian applied to the Court of First Instance of Manila for a writ of habeas corpus.

The Court of First Instance denied the writ applied for "without prejudice to the petitioner's right to file a petition to remain in the Philippines as a merchant." The Insular Collector of Customs brings this appeal and makes the following assignment of error:

"The lower court erred:

"In finding that petitioner having become a merchant after having gained his admission into this country through fraudulent and false representations, may now be allowed to remain in the Philippine Islands, should he desire to file a petition to that effect."

No appeal was taken by the petitioner, and at first glance it would seem that the only question presented was the reservation made by the trial court. But the proceedings are of such a nature that they are not so divisible, and we will therefore proceed to treat the case as if it were presented in its entirety.

It is to be noted that this is not a case of petitioner seeking to land but is an action of the Collector of Customs seeking to deport a merchant in the Philippine Islands for an alleged fraud committed twenty-five years ago. The papers submitted to the board of special inquiry would indicate that petitioner landed in this country in 1924 and again in 1933. The evidence is conclusive that at both of those dates he was a bona fide merchant.

On a deportation case the inquiry should be directed to his last entry or to conduct denounced by statute as grounds for deportation. Without considering whether the five-year limitation on deportation of Chinese by administrative action is still in force, it is clear in the instant case that he had a right as a merchant to enter the Philippines the last two times he entered and that he is therefore not subject to deportation for any misrepresentation his alleged father may have committed in 1909.

The writ of habeas corpus therefore should have been granted and the prisoner discharged from custody. So ordered. Costs in both instances de oficio.

Street, Abad Santos, Vickers, and Diaz, JJ., concur.

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