

SOO HONG CHUNG, PETITIONER AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS, RESPONDENT AND APPELLEE.

G. R. No. 42461. November 26, 1934

Ponente: HULL, J.

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HULL, J.:

Appellant arrived in the City of Manila on May 21, 1934, from Hongkong and demanded entrance as an American citizen by virtue of birth. His right of entry was considered by a board of special inquiry of the Port of Manila appointed by the Insular Collector of Customs, and that board, notwithstanding his presentation of a certificate from the Bureau of Immigration of Washington, D. C., dated June 3, 1920, issued under the provisions of Rule 16 of the Chinese Regulations of that department, refused to admit him on the ground that the testimony of applicant failed to show that he was the party named in that certificate.

From the finding of the board of special inquiry appeal was taken to the Collector of Customs who confirmed the action of the board, and habeas corpus proceedings were had in the Court of First Instance of Manila claiming that the action of the immigration authorities was arbitrary, capricious, and illegal.

After hearing, the Court of First Instance denied the application for habeas corpus and remanded petitioner-appellant to the custody of the immigration authorities. Two days thereafter, appellant filed in the Court of First Instance of Manila a motion for reconsideration based on the merits of the case, which motion was subsequently denied. Whereupon appellant noted his appeal, paid the docketing fees of this court, and filed his brief.

The Acting Solicitor-General has moved that the appeal be dismissed on the ground that appellant did not act within time as provided in section 4 of Act No. 654, which Act authorizes appeals in habeas corpus proceedings. Section 4 reads as follows:

"SEC. 4. The appeal provided for in this Act shall be perfected by filing with the clerk of the Court of First Instance wherein the decision was rendered, or with the judge of the Supreme Court or a Court of First Instance who granted the writ and made the order, within twenty-four hours after the order has been made granting or refusing the discharge of the prisoner, a statement that the person so appealing is dissatisfied with the action of the court or judge in respect to the order so made and appeals therefrom to the Supreme Court. The clerk, or judge, as the case may be, shall thereupon immediately transmit to the Supreme Court the original petition for the writ of habeas corpus, the writ of habeas corpus, the return thereon, a statement of all the proceedings therein, and the original order discharging or remanding the prisoner, together with all the papers used upon the hearing, and the orders in regard to appeal and the statement of appeal. The correctness of the papers shall be certified to by the clerk or judge transmitting them."

Appellant objects to the dismissal and claims that the Solicitor-General is estopped from raising this question at this stage of the proceedings and relies on the decisions of this court in the cases of *Luengo & Martinez vs. Herrero* (17 Phil., 29), and *Slade Perkins vs. Perkins* (57 Phil., 223). Examining those two cases, it is at once seen that the facts are very different from the instant case. In the *Luengo* case the question was not presented for

consideration until upon the hearing of the case on its merits, and the question involved was whether the "presentation of a bill of exceptions for approval, in due time, is equivalent to or involves an announcement of an intention to appeal."

Likewise in the Perkins case the question was not presented until appellee's brief was filed or, in other words, until the case was ready for submission to this court on its merits. Likewise in that case, the fundamental question was whether the order appealed from was of such a nature that an appeal would lie at that time or could be had only at a future date.

Appellant seeks a special remedy and asks us to review and reverse the decisions of the tribunal created by law to hear and determine the facts of the case and the action of the Court of First Instance who held that those proceedings were not arbitrary and illegal. He claims the right to the benefits of a legislative act without complying with the conditions which the statute itself prescribes, viz.: "* * * by filing * * * within twenty-four hours after the order has been made * * * refusing the discharge of the prisoner, a statement that the person so appealing is dissatisfied with the action of the court * * * in respect to the order so made and appeals therefrom to the Supreme Court."

This language is clear and needs little interpretation.

We assume that the statute contemplates that the period of time therein prescribed runs from date of notice of the entry of the order. It may also be noted that the statute in question does not necessarily contemplate a motion for reconsideration before the right of appeal accrues. However, should a motion for reconsideration be filed within the statutory period, it is assumed that the trial court or judge would have the right to consider such motion and that petitioner would have his right to appeal after denial of said motion, provided he made the proper representations within twenty-four hours after receipt of notice of the denial of the motion.

There can be no discussion over the fact that the Legislature may fix the time within which an appeal may be perfected. It has done so in all cases, and while various periods of time for different kinds of cases may be so fixed, the question whether the period should be a short one or more extended is a legislative, not a judicial, question.

In this case, the decision of the Court of First Instance of Manila had become final before petitioner filed his motion for reconsideration. His right to appeal to this court from that decision had already been extinguished by the lapse of time. It could not be revived by a belated motion for reconsideration.

The motion of the Acting Solicitor-General for the dismissal of the appeal must therefore be sustained. Costs against appellant. So ordered.

Avancena, C. J., Street, Malcolm, Villa-Real, Abad Santos, Vickers, Imperial, Butte, Goddard, and Diaz, JJ., concur.

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